

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1326

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
MICHAEL YOUNG

UNITED STATES OF AMERICA,

Appellee,

-against-

JOSEPH SEILLER,

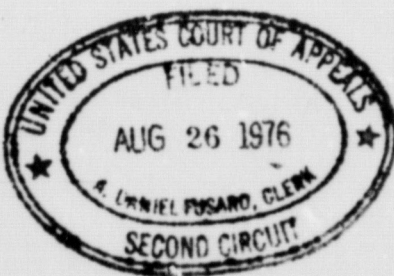
Appellant.

B
P/S

Docket No. 76-1326

APPENDIX FOR
APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MICHAEL YOUNG,
of Counsel.

WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY,
Attorney for Appellant
JOSEPH SEILLER
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BRYAN

71 CRIM. 675

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
JOSEPH SEILLER-All cts.	MAURICE M. McDERMOTT, AUSA
WILLIAM SILVERMAN-All cts.	
ROBERT COHN-Ct. 3 only	
MICHAEL SELVAGGIO-Ct. 3 only	For Defendant:
STEPHEN SALVAGGIO-Ct. 3 only	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed <i>re-opened 11-16-76</i>	Clerk	11/2/76	Least bid	5	
J.S. 3 mailed <i>3.4.5.1</i>	Marshal	7/6/76	Treas		5
XXXXXX Comp. #	Docket fee				
Title 18					
Sec. 2314; 2 & 371					
Transporting stolen US Treas.					
bill in interstate & foreign					
Commerce(ct.2)conspiracy					
to do(cts.1&3)					
THREE COUNTS					

DATE	PROCEEDINGS
6-23-71	Filed Indictment.
6-28-71	JOSEPH SEILLER-Court directs entry of not guilty plea. Motions ret in 10 days. Bail of \$20,000 on 71Cr676 to be rewritten to cover this indictment. Bail limited to city of N.Y. Submit order for medical & psychiatric examination. WILLIAM SILVERMAN-Pleads not guilty Bail cont'd(\$50,000) ROBERT J. COHN-Pleads Not Guilty Bail cont'd(\$25,000) MICHAEL SELVAGGIO-Pleads Not Guilty Bail cont'd(\$15,000) STEPHEN SALVAGGIO-Pleads Not Guilty Bail cont'd(\$15,000) All motions ret in 10 days. BONSAL, J.
6-30-71	Filed Govt's notice of readiness for trial. BRYAN, J.
7-2-71	MICHAEL SALVAGGIO)- Filed notice of appearance by Joseph E. Brill STEPHEN SALVAGGIO) by John J. Pollack., 233 Broadway, N.Y.C. PHONE: 233-6150.
7-2-71	WILLIAM SILVERMAN- Filed notice of appearance by DANIEL H. GREENBERG, ESQ., 40 Exchange Place, N.Y.C. 10005 PHONE: 425-4050.

DATE	PROCEEDINGS
7-2-71	ROBERT COHN- Filed notice of appearance by DANIEL H. GREENBERG, ESQ., 40 Exchange Place, N.Y.C. 10005 PHONE: 425-4050.
7-22-71	MICHAEL SELVAGGIO)- Filed notice of motion for severance and discovery and inspection. STEPHEN SALVAGGIO) and affidavits. BRYAN, J.
7-22-71	MICHAEL SELVAGGIO)- Filed memo of law in support of motions. STEPHEN SALVAGGIO) BRYAN, J.
7-27-71	WILLIAM SILVERMAN) Filed notice of motion for severance, dismissal of cts. ROBERT COHN) 1 & 2, suppression and discovery and inspection and affidavit. BRYAN, J.
7-29-71	JOSEPH SEILLER- Filed order that deft submit to examination at Bellevue Hospital Prison Psychiatric Ward, to determine deft's mental competency to stand trial, that said ward report to Clerk's Office their findings and that such services be paid for by the U.S. Atty. BONSAL, J.
9-21-71	ALL DEFTS- motion to sever count 3 GRANTED. BRYAN, J.
9-21-71	SEILLER- filed memo-endorsed on motion dated 7-20-71., "Disposed of as indicated in open court. See minutes of hearing." (m/n) BRYAN, J.
21-71	SEILLER- filed memo-endorsed on motion dated 7-22-71., "Disposed of in open court. See minutes of hearing" (m/n) BRYAN, J.
9-21-71	SILVERMAN)- filed memo-endorsed on motion dated 7-27-71., "Disposed of COHN) in open court. See minutes of hearing" (m/n) BRYAN, J.
10-29-71	William Silverman) Docketed the following papers received from Magistrate Raby, File Robert J. Cohen) marked 7-23-71. Michael Selvaggio) Docket sheets (4), Criminal complaint dated 5-17-71, and four Stephen Salvaggio) appearance bonds.
5-1-72	JOSEPH SEILLER - Deft & atty. present. Withdraws plea of not guilty and PLEADS GUILTY to cts 1 & 3 only P.S.I. ordered..Sent. 6-6-72 bail cont'd..Cooper, J. Govt's
6-8-72	Filed affidavit and notice of motion for an order severing the trial of said deft's Selvaggio, S. Salvaggio, from that of the Silverman and Cohen defgt's. etc.
6-8-72	Motion to sever thr trial on deft's Salvaggio, and S. Salvaggio on the third ct of the indictment and deft's Silverman and Cohn on such ct is granted. (see memorandum) Bryan, J.
6-26-72	William Silverman- Trial begun with jury. (atty. present)
6-27-72	Trial continued
6-28-	Trial ad d. to June 29/72
6-29-72	Trial continued.

DATE	PROCEEDINGS
6-30-72	Trial continued.
7-1-72	Trial continued.
7-6-72	Trial continued - both defts - Left. Silverman motion for judgment of acquittal denied. - Bryan, J.
7-7-72	Trial continued.
7-10-72	Trial continued - Left. defts.
7-12-72	Trial continued - both defts - Left. motion for acquittal denied. Suggestions by counsel - Court charges jury. Jury goes to deliberate at 3:10 PM. Jury returns verdict. Jury sends out note to court and Court instructs. Jury to return 7-13-72 for more deliberation.
7-13-72	Trial continued - Left. SILVERMAN found not guilty by the jury. Left. Silverman motion to dismiss ct. 1 & 2 denied. Bail on ct. 3 to be discharged. \$50,000. Bryan, J.
7-20-72	W. Silverman - Left. notice of motion for enlargement of bail.
7-25-72	Silverman-filed affvt. of Maurice M. McDermott, in response deft's motion for an order enlarging his bail limits to include West Germany
7-25-72	Silverman-filed memo endorsed on motion filed 7-20-72 for enlargement of bail. Motion granted. So ordered Bryan, J. (N/H)(see file)
7-26-72	W. Silverman - Filed consent of Surety - Public Service Mutual Insurance Co.
8-2-72 Transcript of record of proceedings, dated 6/26, 27, 28, 29, 30 1972 7/5, 6, 7, 10, 12-13 1972 6/20, 21, 22 & 23 1972	
8-2-72	Transcript of record of proceedings, dated 5-23-72
8-2-72	Transcript of record of proceedings, dated 5-1-72
10-23-72	Both defts- Filed affidavit and notice of motion to dismiss certain counts.
12-15-72	WILLIAM SILVERMAN) ROBERT COHN) MICHAEL SELVAGGIO) STEPHEN SALVAGGIO) Entered and filed nolle prosequi.....Bryan, J.

DATE	PROCEEDINGS
1-12-73	Seiller-Filed affidavit and notice of motion for the withdrawal of the deft plea of guilty.
1-22-73	Seiller-Filed affidavit for writ of habeas corpus writ iss ret 1-23-73.
1-26-73	Seiller- Filed govt's affidavit in opposition of deft's motion.
1-26-73	Seiller- Filed Memorandum by Judge Cooper on deft's motion to withdraw pleas of indictments 71 Cr 675 and 71 Ct676. ***** *****Motion denied. (see memo, on file) (m/n)
3-13-73	Seiller-Filed affidavit for a writ habeas corpus. writ iss ret 3-21-73.
3-13-73	Seiller -Filed affidavit for a writ, writ iss ret 3-13-73.
3-21-73	JOSEPH SEILLER - Filed Judgment(Atty.present. Deft produced on Writ)The deft is committed for imprisonment for a period of THREE YEARS on each of Cts.1 and 3 to run concurrently with each other and with the sentence imposed on 71Cr.676 this day. This sentence to commence upon the defts release from confinement under the State sentence he is presently serving at Ossining Correctional Facility. Ct.2 is dismissed on motion of the defts counsel with the consent of the Govt.....Cooper, J. Entered 3-27-73....
4-4-73	<i>Seiller - Filed writ of habeas corpus with the Court. Writ granted and deft released.</i>
5-13-73	<i>Seiller - Filed writ of habeas corpus with the Court. Writ granted and deft released.</i>
6-15-73	JOSEPH SEILLER-Filed letter from deft. to Judge Cooper.
6-15-73	JOSEPH SEILLER-Filed Order-We treat petitioner's letter as a motion for reduction of sentence. The application is denied. in all respects.-So Ordered- J Cooper, J. m/n
2-11-75	JOSEPH SEILLER-Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
2-13-75	JOSEPH SEILLER - filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 1-21-75.
5-16-76	<i>Joseph Seiller Filed sentencing Memorandum on behalf of D.W. Joseph Seiller.</i>
06-23-76	Filed JUDGMENT & COMMITMENT (atty present) Deft. having been convicted as charged of the offense of conspiracy to violate Sec. 2384 of Title 18, U.S. Code, and having been sentenced by this Court on March 21, 1973, to three (3) years on each of counts 1 and 3 to run concurrently with each other and with the sentence imposed on count 1 of Indictment 71 Cr. 676, and defendant having appealed from an order denying a motion to vacate the judgment of conviction, and the Court of Appeals having affirmed as to count 3 but remanded for reconsideration of sentence on that count and reversed as to the other conspiracy counts and remanded for repleading to those counts, the judgment of this Court is hereby amended as follows: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment, on count 3, for a period of three (3) years. Defendant to be credited with time previously served. COOPER, J. Issued commitment 7-1-76.

(Cont'd)

DATE

PROCEEDINGS

7-2-76 DR. JOSEPH SEILLER - Filed Dfts. Notice of Appeal from Order of
final judgment entered 6-23-76. (mailed notice)

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

(3)

JOSEPH COOPER 71 CRIM. 376

TITLE OF CASE

THE UNITED STATES

vs.

JOSEPH SEILLER

GABRIEL INFANTI

NATHAN KURTZ

ATTORNEYS

For U. S.:

MAURICE M. McDERMOTT, AUSA

For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed 1 <i>signed #3</i>	Clerk	8/23/71	<i>Summary</i>	5	5
J.S. 3 mailed <i>5-1-73</i>	Marshal	8/23/71	<i>H. J. Bickel (240)</i>	5	5
XXXXXX Comp. #	Docket fee	8/25/71	<i>Summary</i>	1500	1500
Title 18	G. INFANTI Fined \$5,000.	8/25/71	<i>Summary</i>	1500	1500
	NATHAN KURTZ Fined \$5,000.	8/25/71	<i>Summary</i>	1500	1500
Sec. 2314 & 2; 371					
Transporting stolen					
securities in interstate &					
foreign commerce (ct. 2)					
conspiracy to do (ct. 1)					
TWO COUNTS					

DATE

PROCEEDINGS

6-23-71	Filed Indictment.
6-28-71	JOSEPH SEILLER-Court directs entry of plea of not guilty. Bail cont'd (\$20,000). GABRIEL INFANTI-Court directs entry of plea of not guilty. Bail cont'd (\$20,000). NATHAN KURTZ-Pleads Not Guilty. Bail cont'd (\$10,000 PRB). all motions ret in 10 days. BONSAL, J.
6-30-71	Filed Govt's notice of readiness for trial. COOPER, J.
7-2-71	NATHAN KURTZ- Filed notice of appearance by RICHARD A. ROSENBEY, ESQ., PHONE: 442-0212.
7-20-71	Filed motion to dismiss, sever count 3 and bill of particulars. BRYAN, J.
7-29-71	JOSEPH SILLER- Filed order that deft submit to examination at Bellevue Hospital Prison Psychiatric Ward, to Determine deft's mental competency to stand trial, that said Ward report to Clerk's Office their findings and services to be paid for by U.S. Atty. BONSAL, J.

DATE	PROCEEDINGS
8-13-71	GABRIEL INFANTI-Filed notice of motion for dismissal of indictment, severance, disclosure and bill of particulars and affidavit. COOPER, J.
8-13-71	GABRIEL INFANTI-Filed memorandum of law submitted on behalf of deft. COOPER, J.
8-26-71	JOSEPH SEILLER-Filed motion for dismissal, severance, bill of particulars and affidavit. COOPER, J.
4-18-72	Filed Govt's B/P. (COOPER, J)
4-14-72	Filed- Memorandum for Govt. G. INFANTI
4-20-72	Filed reply affdvt of J. Brill, re: deft's motion to dismiss indictment. (10-19-71)
4-20-72	Filed Govt's memorandum of law in opposition to deft's pre-trial motions (4-14-72)
4-20-72	Filed Govt's affdvt in opposition to defts motions. (4-14-72)
4-20-72	N. KURTZ: Filed notice of motion for B/P, copy & inspect, dismiss indictment etc.
4-20-72	N. KURTZ: Filed notice of motion for B/P
4-20-72	N. KURTZ: Filed affdvt in support of motions.
4-20-72	N. KURTZ: Filed notice of motion for inspection of exculpatory matter
4-20-72	N. KURTZ: Filed notice of motion for inspection of Gd. Jury Min.
4-20-72	N. KURTZ: Filed notice of motion to dismiss indictment.
4-20-72	N. KURTZ: Filed notice of motion to inspect electronic monitoring.
4-20-72	N. KURTZ: Filed affdvt of R.Q. ROSENBERG in support of motions.
5-1-72	JOSEPH SEILLER - Deft & atty. present. Withdraws plea plea of not guilty and PLEADS GUILTY to Ct. 1 only. P.S.I. ordered sentence 6-6-72 bail cont'd. COOPER, J.....
5-8-72	Count 1 served-Trial begun on ct 2 against defts. Infanti and Kurtz Jury Cooper, J.
5-9-72	Trial continued
5-10-72	Trial continued
5-11-72	Gov't rest-Ct. 1 dismissed. No opposition
5-15-72	Both sides rest- Motion denied
5-16-72	Trial concluded- Jury finds both defts guilty on ct. 2-Motions reserved until date of sentence. pre-sent. report ordered.-Sentence June 21, 1972 at 10:00A.M.-Bail continued. Cooper, J.

DATE

PROCEEDINGS

5-1-72 Gabriel Infanti) Gov't exhibits 3504, d. 3508, d. 3510; d 3512; d
Nathan Kurtz) ordered impounded and placed in vault in Rm. 602
Cooper, J.

6-13-72 Gabriel Infanti-filed affvt. and notice of motion for an order
requiring the probation Service to furnish to the
deft. all material contained in its pre-sent.
investigation and for such other relief.

6-8-72 Filed-Memo. endorsed on motion filed 6-13-72 Ordering all material
contained in is pre-sent investigation and for such other relief.
Motion denied. So ordered Cooper, J. (mailed notice)(see
file).

6-13-72 Filed- Affvt. of Maurice M. McDermott, in connection with the post-
trial motion of deft. Nathan Kurtz, for an order requiring the
Probation Dept. to furnish the deft prior to imposition of sent. all
material contained in its pre-sent investigation.

6-14-72 Nathan Kurtz-filed motion and motion and arrest of judgment
for an order setting aside the verdict and granting a new
trial

6-20-72 Nathan Kurtz-filed memo endorsed on motion filed 6-14-72. for an order
setting aside the verdict and granting a new trial.
Motion denied in all respect So ordered Cooper, J.
(E/N)

6-20-72 Gabriel Infanti-filed motion in arrest of judgment pursuant to rule 34.
filed- memo endorsed on motion filed 6-20-72. for an order to arrest
the Judgment. Motion denied in all respects.
So ordered Cooper, J.

Filed motion for an order of acquittal

Filed memo endorsed on the above motion Motion denied in all respects.
So ordered Cooper, J. (M/N)

6-20-72 G. Infanti) filed affvt. of Maurice M. MC Dermott, in opposition to
N. Kurtz) Defts. motions pursuant to rules 29, 33 and 34.

6-21-72 Both Defts Infanti & Kurts-Sentence adjd. without date
on application of Joseph Brill, Atty. for deft. Infanti. Cooper, J.

8-2-72 ~~Filed~~ Transcript of record of proceedings, dated 5-1-72 File/en 714-676

9-2-72 ~~Filed~~ Transcript of record of proceedings, dated 5-16-72

SEP 8 1972 ~~Filed~~ Transcript of record of proceedings, dated 6-21-72

SEP 8 1972 ~~Filed~~ Transcript of record of proceedings, dated 5-8-72 5-9, 10-72

(Cont'd page 4)

DATE	PROCEEDINGS
8-15-72	G. INFANTI - Filed Judgment (Atty. present) (# 72, 780) It is adjudged that the deft is sentenced to TWO(2) YEARS. Execution of sentence is suspended. Probation for TWO(2) YEARS, subject to the standing probation order of this Court, and that the deft is FINED \$5,000.00 Fine to be paid within 90 days. Cooper, J.
8-15-72	H. KURTZ - Filed Judgment (# 22, 287) It is adjudged that the deft is sentenced to TWO(2) YEARS. Execution of sentence is suspended. Probation for TWO(2) YEARS, subject to the standing probation order of this Court, and the deft is FINED \$5,000.00 Fine to be paid within 90 days. Cooper, J.
8-22-72	Nathan Kurtz - Filed notice of appeal to the U.S.C.A from judgment entered 8-15-72. (fee paid)
8-22-72	Gabriel Infante - Filed notice of appeal to the U.S.C.A from the judgment entered 8-15-72. (fee paid)
8-24-72	Defts. Infanti and Kurtz - Filed memo. endorsed attached to letter of of Atty. Joseph E. Brill. The application to suspend payment of a fine pending appeal. Application granted. ordered Cooper, J. (r/n) see file
5-11-72	
5-15, 16-72	
9-8-72	Filed Transcript of record of proceedings, dated June 21, 1972.
9-25-72	Filed Transcript of record of proceedings, dated Aug 15, 1972 Sentinel
10-3-72	Filed notice that record has been certified and transmitted to the USCA. on 10-3-1972
11-17-72	Filed Transcript of record of proceedings, dated 8/5/71.
1-12-73	Seiller - Filed affidavit and notice of motion for the defts withdrawal of plea of guilty.
1-22-73	Seiller - Filed affidavit for writ of habeas corpus writ issued ret 1-23-73.
1-26-73	Seiller - Filed govt's affidavit in opposition of deft's motion.
1-26-73	Seiller - Filed Memorandum by Judge Cooper on deft's motion to withdraw pleas in indictments 71 Cr 675 and 71 Cr 676. ***** ***** Motion denied. (see memo. on file) (m/n)
*1-23-73	Seiller - Deft with his atty James Cally present, pleads guilty to ch I, P T ordered sentence 3-12-73 at noon. (Produced on writ) Cooper, J.
3-13-73	Seiller - Filed affidavit for a writ of habeas corpus writ iss ret 3-21-73.
3-13-73	Seiller - Filed affidavit for a writ, writ iss. ret 3-13-73

Cont'd Page 45

PROCEEDINGS

DATE	PROCEEDINGS
3-21-73	JOSEPH SEILLER - Filed Judgment(Atty.present,deft on a writ)The deft is committed for imprisonment for a period of THREE YEARS on count 1. This sentence to run concurrently with the sentence imposed on 71Cr,675 this day. This sentence to commence upon the defts release from confinement under the State sentence he is presently serving at Ossining Correctional Facility. Ct.2 is dismissed on motion of the Govt deft with consent of the Govt...Cooper,J. Entered 3-27-73-----
4-16-73	GABRIEL INFANTI and NATHAN KURTZ-Filed true copy of U.S.C.A. mandate with Opinion attached-The Judgment as to Gabriel Infanti of the District Court is affirmed but as to Nathan Kurtz the Judgment is reversed in accordance with the Opinion of this Court--Clerk,U.S.C.A.--Judgment Entered 4-17-73--Clerk D.C. mailed notices 4-25-73
4-19-73	Seiller-Filed writ of habeas corpus with Marshal's return 1-23-73 writ adjd to 3-12-73, writ returned,deft not located at the Mahattan det. West st.
4-19-73	Seiller-Filed writ of habeas corpus with Marshal returns 3-20-73 writ satisfied. Cooper,J.
6-15-73	JOSEPH SELLER-Filed letter from deft. to Judge Cooper,
6-15-73	JOSEPH SEILLER-Filed order-We treat petitioners's letter as a motion for reduction of sentence. The application is denied.--Cooper, J. mailed notices filed in 7'cr675.
2-11-75	JOSEPH SEILLER-Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
2-13-75	JOSEPH SEILLER-Filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 1-21-75.
2-28-75	Filed transcript of record of proceedings dated 3-21-73.
7-1-75	Govt's. motion to dismiss indictment as to Deft. Kurtz adjourned to 7-15-75 at 12 noon.....Cooper,J.
7-15-75	Deft. Kurtz hearing held. Govt. ordered to nolle case by Aug. 12,1975 noon A. letter to the effect that Washington approves is suffice.....Cooper, J.

-over-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
UNITED STATES OF AMERICA,

-v-

JOSEPH SEILLER, WILLIAM SILVERMAN,
ROBERT COHN, MICHAEL SELVAGGIO and
STEPHEN SALVAGGIO,Defendants.
-----x

: 71 CRIM. 675

INDICTMENT

FILED

71 Cr.

JUN 23 1971

S. D. OF N. Y.

The Grand Jury charges:

1. On or about the 1st day of September, 1969, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSEPH SEILLER and WILLIAM SILVERMAN, the defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other, and with other persons to the Grand Jury known and unknown to violate Section 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the said defendants would transport and cause to be transported in interstate and foreign commerce goods, wares, merchandise and securities of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about September 29, 1969, defendants

MMMcD:jem

New York, New York.

2. On or about September 29, 1969, defendant JOSEPH SEILLER sent a telex message to London, England.

3. On or about September 29, 1969, defendant, WILLIAM SILVERMAN travelled through and from the Southern District of New York to Kennedy International Airport, New York, New York,

(Title 18, United States Code, Section 371).

MMMcD:jem

SECOND COUNT

The Grand Jury further charges:

On or about the 29th day of September, 1969, in the Southern District of New York, JOSEPH SEILLER and WILLIAM SILVERMAN, the defendants, unlawfully, wilfully and knowingly did transport in interstate and foreign commerce from New York, New York to London, England, goods, wares, merchandise and securities of the value of \$5,000 or more, to wit, a \$1,000,000 United States Treasury Bill, serial number 210841A, issued August, 1969, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2).

THIRD COUNT

The Grand Jury further charges:

1. On or about the 1st day of December, 1970, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSEPH SEILLER, WILLIAM SILVERMAN, ROBERT COHN, MICHAEL SALVAGGIO and STEPHEN SALVAGGIO, the defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other, and with other persons to the Grand Jury known and unknown, to violate Sections 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the said defendants would transport and cause to be transported in interstate and foreign commerce goods, wares, merchandise and securities of a value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about December 30, 1970 defendant JOSEPH SEILLER made a telephone call.
2. On or about January 5, 1971, defendant JOSEPH SEILLER travelled to the vicinity of 237 Madison Avenue, New York, New York.
3. On or about February 7, 1971, defendant, WILLIAM SILVERMAN travelled to the vicinity of 237 Madison Avenue, New York, New York.

4. On or about May 15, 1971 defendant WILLIAM SILVERMAN travelled to the vicinity of the Tudor Hotel, 304 East 42nd Street, New York, New York.

5. On or about May 15, 1971, defendants WILLIAM SILVERMAN, ROBERT COHN, MICHAEL SALVAGGIO and STEPHEN SALVAGGIO travelled to the vicinity of the Commodore Hotel, 304 East 42nd Street, New York, New York.

6. On or about May 15, 1971, in the Commodore Hotel, defendants MICHAEL SALVAGGIO and STEPHEN SA VAGGIO, carried luggage containing approximately \$1,002,000 worth of bonds.

(Title 18, United States Code, Section 371.

Arville R. Wenzel
FOREMAN

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, Jr.
United States Attorney

71 JUN 28 1971

JUDGE BRYAN

Form No. USA-33a-274 (Ed. 9-23-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JOSEPH SEILLER, WILLIAM SILVERMAN, ROBERT COHN, MICHAEL SELVAGGIO and STEPHEN SALVAGGIO,

Defendants.

INDICTMENT

71 Cr.

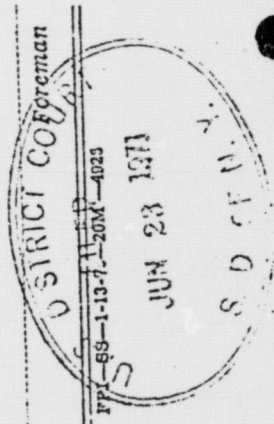
In violation of Title 18, U.S.C. Section 371 and Title 18, U.S.C., Sections 2314 and 2.

WHITNEY NORTH SEYMOUR, Jr.

United States Attorney

A TRUE BILL

BEST COPY AVAILABLE



JUN 28 1971

JOSEPH SEILLER -

Court directs entry of not guilty plea. Entered photograph - fingerprinted. Motions ret. in 10 days. Returned on court recognizance. Bail set at \$30,000 on 7/1/71 to be returned to cover the indictment.

Bail limited to \$10,000. Subject under for indictment. Prosecution - signed for return.

William Silverman - Pleads not guilty - Bail continued. \$30,000.

Robert J. Cohn - Pleads not guilty - Bail continued. \$30,000.

Michael Selvaggio - Pleads not guilty - Bail continued. \$10,000.

Stephen Salvaggio - Pleads not guilty - Bail continued. \$10,000.

All motions ret. in 10 days. Return.

SEP 21 1971

All rights - Motion served. \$30,000. (Dryden, N.Y.)

MCDERMOTT

May 1, 1972 - Dept Seiller, (yes lady, all) withdrew the

Not guilty and Pleads Guilty to Counts 1 & 3.

Pre-Sentence Report ordered. Return for 6/1/72.

Bail continued. Coops.

(PW)

... ..
Deft's Silverman & Cohn, Joseph Brill - atty for Deft's Salvaggio, Maurice Mc Dermott - Asst U.S. Atty, Deft's motion to suppress, JUN 21 1972 Hearing cont'd - June 22/72 Hearing cont'd
JUN 23 1972 Hearing cont'd - Both Deft's motions to suppress - denied
Gov't motion to sever Deft Cohn - Granted. - Deft Silverman motion to dismiss ct 1 & 2 - denied Bryan J.

JUN 23 1972 Case called - Atty present - Jury duly impaneled & sworn - Trial began - Opening statements of counsel
JUN 27 1972 Trial cont'd
JUN 28 1972 Trial adjourned to June 29/72
JUN 29 1972 Trial cont'd
JUN 30 1972 Trial cont'd
JUL 5 1972 Trial cont'd
JUL 6 1972 Trial cont'd - Gov't Rests. Deft's Silverman motion for judgement of acquittal - Denied
JUL 7 1972 Trial cont'd
JUL 10 1972 Trial cont'd - Deft Rests.
JUL 12 1972 Trial cont'd - Both sides rest. Deft's motion for Acquittal - Denied. Summations by counsel - Court charges jury, Marshals sworn, Jury out to deliberate at 3:18 P.
~~Jury returns verdict at~~

Jury sends out note to court + court instructs
Jury to return July 13/72 for more deliberation.

JUL 13 1972 Trial cont'd - Dft Silverman found not guilty
by the jury. Jury finds Dft Silverman not guilty.
Dft Silverman motion to dismiss ct 1 + 2 - denied
Bail on ct 3 to be discharged. \$50,000.00

J

Bryan J

NO ORRINT

Produce a writ

Mar 21, 1973 - Dft Joseph Sutter, (former Calh, atty) sentenced to 3 yrs
on each of Counts 1 + 3 to run concurrently with each other and
with sentence imposed on 71 CR 676. This sentence is imposed upon the
dft's release from confinement under the other sentence he is now serving
at Lansing Cor. Facility. Count 2 is dismissed. (Large J.)

(R.C.)

Chief

JUDGE COOPER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

- v - :

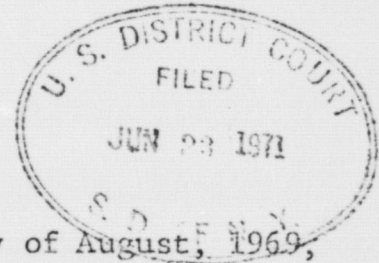
JOSEPH SEILLER, GABRIEL INFANTI :
and NATHAN KURTZ, :

Defendants. :

----- x

INDICTMENT

71 Cr. _____



The Grand Jury charges:

1. From on or about the 1st day of August, 1969,
and continuously thereafter up to and including the date
of the filing of this indictment, in the Southern District
of New York, JOSEPH SEILLER, GABRIEL INFANTI and NATHAN
KURTZ, the defendants, unlawfully, wilfully and knowingly
combined, conspired, confederated and agreed together and
with each other, and with other persons to the Grand Jury
known and unknown, to violate Section 2314 of Title 18,
United States Code.

2. It was part of said conspiracy that the said
defendants would transport and cause to be transported in
interstate and foreign commerce goods, wares, merchandise
and securities of the value of \$5000 or more, knowing the
same to have been stolen, converted and taken by fraud.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about September 19, 1969, defendant JOSEPH SEILLER caused a letter to be sent to Wiesbaden, Germany.

2. On or about September 24, 1969, defendant JOSEPH SEILLER caused a letter to be sent to Wiesbaden, Germany.

3. On or about September 27, 1969, defendant JOSEPH SEILLER sent a telex message to Frankfurt, Germany.

4. On or about September 29, 1969 defendant JOSEPH SEILLER caused a letter to be sent to Wiesbaden, Germany.

(Title 18, United States Code, Section 371.)

SECOND COUNT

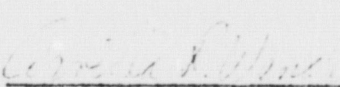
The Grand Jury further charges:


On or about the 28th day of September, 1969, in the Southern District of New York, JOSEPH SEILLER, GABRIEL INFANTI, and NATHAN KURTZ, the defendants, unlawfully, wilfully and knowingly did transport in interstate and foreign commerce from New York, New York to Frankfurt, Germany, goods, wares, merchandise and securities of the value of \$5000 or more, to wit, 29371 shares of American Telephone and Telegraph common stock, certificate number 04185666 and 15274 shares of Boeing common stock,

MMMcD:eh

certificate numbers M12046, M12049 and M12072, knowing
the same to have been stolen, converted and taken by
fraud.

(Title 18, United States Code, Sections
2314 and 2.)


Foreman


WHITNEY NORTH SEYMOUR, JR.
United States Attorney

JUDGE COOPER
United States District Court

SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

JOSEPH SEILER,
GABRIEL INFANTI and
NATHAN KURTZ,

Defendants.

INDICTMENT

(18, U.S.C., §§2314 and 2.)
(18, U.S.C., §371)

WHITNEY NORTH SEYMOUR, JR.

United States Attorney

A TRUE BILL

Foreman

FPI-88-1-13-70-20M-4923

JUN 28 1971

May 2, 1971 - Court directed entry of judgment
not guilty. Bail set at \$10,000.
Subscribed Defendant. Court directed entry of judgment
not guilty. Bail set at \$10,000.
May 11, 1971 - made not guilty - Bail continued.

All motions set for May 11, 1971 (Re)

NO ORAL HEARING

May 1, 1972 - Dept Seiler (James Cully, Atty) withdrawn
Plan of Not Guilty and Pleads Guilty to Count 1
Oral - Pre sentence report ordered. Sentence
June 6, 1972 at 10:00 AM. Bail continued

McDonnell

May 8, 1972 - Court 1 served.

Trial began on 8/2 against Seiler, Infante & Kurtz
Cooper.

May 9, 1972 - Trial continued

May 10, 1972 - Trial continued

May 11, 1972 - Gov T Lita - Ct 1 dismissed. No opposition

May 15, 1972 - Both sides lost - Motion denied

May 16, 1972 - Trial concluded. Jury found both Seiler & Infante
on 8/2. Motion acquittal until date of sentence. Pre-
sentence report ordered. Sentence June 21, 1972 at 10:00 AM
Bail continued. Cooper.

~~NR 21, 1972~~ ~~Infants~~ ^{Infants} ^{adjudicated} without date
of Application of Joseph Bill, Atty for Dept Infants. Cooper J

August 15-1972

Dept Infants sentence to 2 yrs E. L. L. placed on
probation for a period of 2 yrs. Fined \$5,000.00 fine to
be paid within 90 days. Cooper J.

~~August 15-1972~~ ~~Dept Infants sentence to~~

August 15-1972 Dept Kutz sentence 2 yrs E. L. L. placed
on probation for a period of 2 yrs. Fined \$5,000.00 fine
to be paid within 90 days. Cooper J.


28 1973 ^{Sullen} ^{at} ^{with} ^{him} ^{attys} ^{James} ^{Callahan} ^{present} ⁱⁿ ^{court}
quell, to ^{be} ^{sentenced} ^{to} ¹²⁻¹²⁻⁷³ ^{at} ^{noon}
it is suspended until time of sentence.

Cooper J R7

H^c DEBERT

Return on writ

MAR. 21, 1973 Deft. Joseph Seibel (from Calif. with 1 sentence to 3 years
on Calif. The sentence is in conformity with sentence imposed
on 7/1/68 1975. Sentence to commence upon the deft's release
from confinement under the state sentence deft is presently serving at
Carson Correctional Facility. Cf 2. Sentence. Cooper, J.

JUL 1 - 1975 Joint motion to dismiss 
Indictment as to ^{deft.} Kurtz adjourned
To July 15, 1975 at ^{12:} noon
Cooper, J.
R

JUL 15 1975 Deft. Kurtz Hearing held. - Court. Ordered
to note case by Aug. 12, 1975 noon
a letter to the effect that Washington Approves
is suffice.
N Cooper, J.

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UNITED STATES OF AMERICA

v.

71 Cr. 675

JOSEPH SEILLER,

Defendant

June 23, 1976

B e f o r e :

HON. IRVING BEN COOPER
District Judge

For the Government: Thomas Sear,
Assistant United States Attorney

For the Defendant: Michael Young, Esq.,
Legal Aid

2 THE COURT: In accordance with the mandate
3 of the Circuit Court, the direction being summed up on
4 page 6537 of the slip opinion: The order of the District
5 Court which denied Seiller's motion to vacate the judgment
6 of conviction on Count 3 of Indictment 71 Criminal 675,
7 is affirmed. With respect to Count 1 of Indictment
8 71 Criminal 675 and Count 1 of 71 Criminal 676, The order
9 of the District Court is reversed and the case as to those
10 two counts is remanded to give Seiller an opportunity to
11 replead. The case also is remanded for re-
12 consideration of the sentence on Count 3 of Indictment
13 71 Criminal 675.

14 Accordingly, we set aside the official notation
15 by us that a plea of guilty had been entered by this de-
16 fendant before us in the two cases, the two counts, rather,
17 other than Count 3 of Indictment 71 Criminal 675, so they
18 are set aside, those two pleas allegedly made, and the
19 defendant now is given the opportunity to replead with
20 regard to those two.

21 How does the defendant plead with respect to
22 Count 1 of Indictment 71 Criminal 675, counsel?

23 MR. YOUNG: Not guilty, your Honor.

24 THE COURT: How does the defendant plead with
25 respect to Count 1 of 71 Criminal 676?

MR. YOUNG: Not guilty, your Honor.

THE COURT: Very well.

The Court will now take up the resentencing with respect to Count 3 of Indictment 71 Criminal 675.

Does the government wish to be heard?

MR. SEAR: Yes, just briefly, your Honor.

The only matter that I would like to discuss on the record is the question of the possible deportation of the defendant Mr. Seiller which was raised in the papers in the motion -- in the sentencing memorandum of his counsel-- basically to the effect that the detainer had been filed by the Immigration and Naturalization Service with the Metropolitan Correction Center and that Mr. Seiller faced deportation upon the expiration of his sentence and that this Court should take that factor into consideration in determining whether or not this Court should resentence Mr. Seiller to time served or some other sentence less, somewhat less than the full year sentence which he originally received on the count in question.

The one factor that concerned me was whether or not there was any -- the certainty of whether or not he would be deported.

I contacted the Immigration and Naturalization

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2 Service with respect to the detainer. They informed me
3 that they did intend to proceed against Mr. Seiller.

4 This morning, one of the trial attorneys informed
5 me that the basis for his deportation would be the fact
6 that he was an alien who had overstayed his visa in this
7 country, so that the deportation would in effect depend
8 upon the fact that he was an alien who overstayed.

9 They also informed me at INS that while the
10 deportation proceeding itself might not take a very long
11 time, there would then be the normal course of adminis-
12 trative appeals and then appeals to the Second Circuit
13 that would be available to Mr. Seiller.

14 The point of all this being that the government
15 would have some concern over the fact that even if Mr.
16 Seiller were turned over to INS right now, it might be
17 a long, long time before he was deported, if at all.

18 In light of that I spoke with the counsel for
19 Mr. Seiller and stated that while the government was not
20 in a position to recommend any sentence and would not, that
21 I have had the experience in the past whereby a judge had
22 sentenced an individual to a specific sentence suspended
23 upon the condition that the individual consent to his de-
24 portation or voluntarily leave the country, and I just men-
25 tioned that to counsel for Mr. Seiller, and I want to put

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2 that on the record now and I was informed this morning
3 by the trial attorney handling Mr. Seiller's case from
4 Immigration and Naturalization that if-- first of all,
5 that less than a month ago they had a similar sentence
6 which they handled where a judge of the federal court
7 had ordered sentence suspended upon the condition of de-
8 portation, voluntary deportation.

9 If your Honor did order that, then they could
10 handle that fairly expeditiously and that that would ob-
11 viously aid in the deportation of Mr. Seiller, and I
12 simply want to put all those factors on the record.

13 Thank you.

14 THE COURT: Mr. Young, I will be glad to hear
15 from you.

16 MR. YOUNG: Thank you, your Honor.

17 First of all, in response to what the government
18 has just advised the Court, I have spoken with the defend-
19 ant. He does have certain pending matters such as his
20 divorce which he needs to take care of, which will require
21 a short period of time, but he is perfectly willing to
22 voluntarily leave the country upon the conclusion of those
23 matters.

24 He estimates a maximum of 90 days and he would
25 voluntarily leave the country at his own expense rather than

1 require the government to pay for any plane fares and so
2 on.
3

4 We submitted a memorandum to your Honor approxi-
5 mately a week ago outlining the reasons why we are re-
6 spectfully requesting that Dr. Seiller's sentence on the
7 remaining count be time served.

8 Dr. Seiller has already served one and a half
9 years of his federal sentence, his prior federal sentence.
10 Prior to that time he served two years of a state sentence
11 on related charges. He has therefore been incarcerated
12 continuously for three and a half years.

13 This is, of course, a fairly lengthy incarceration
14 under any point of view but for Dr. Seiller, it has
15 been an especially punitive one because of his medical
16 condition.

17 Dr. Seiller has been suffering for approximately
18 four years from a condition which has been tentatively diag-
19 nosed as a vascular spasm. This has produced vertigo,
20 loss of equilibrium, nausea, vomiting, has required him to
21 get around only by the use of either canes or on occasion
22 a wheelchair.

23 It is also important to note that most of the
24 time that he has spent in incarceration has been spent
25 in hospital units because his condition has prohibited

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2 him from living in even the normal population of the prison
3 setting.

4 Moreover, as the government has pointed out,
5 there is an INS detainer against Dr. Seiller so that even
6 if this Court did impose a sentence of time served, Dr.
7 Seiller would not be set free but would be turned over
8 to the custody of INS, which would then proceed against
9 him.

10 Moreover, Dr. Seiller is facing divorce proceed-
11 ings. Those divorce proceedings are on the ground of
12 his incarceration so this is sort of an additional punish-
13 ment. He faces the possible loss of his wife and daughter
14 as a result of his conviction in this case.

15 I would like to point out in relation with that
16 that Dr. Seiller's wife is present in court today. Al-
17 though the divorce proceedings are going on she remains
18 supportive of her husband and wished to demonstrate that
19 by coming here today.

20 Moreover, I urge the Court in considering sen-
21 tence to consider the positive factors relating to Dr.
22 Seiller. After his initial sentencing before this Court
23 I believe the Court received numerous supportive letters
24 from prominent people attesting to Dr. Seiller's positive
25 qualities. He has been awarded membership in the Knights

2 of Malta.

3 Moreover, his prison record has been exemplary.
4 I attached to our sentencing memorandum three letters from
5 the prison, two from senior officers, and one from the
6 inmate liaison committee attesting to the fact that
7 Dr. Seiller has used his medical training on numerous oc-
8 casions to be of assistance both to the inmates at the
9 prison that he was in or to the staff itself.

10 On one occasion recently, in fact, he saved the
11 life of an inmate who had committed suicide and was
12 clinically dead when Dr. Seiller arrived. Dr. Seiller
13 arrived on the scene before the medical staff of the
14 prison could get there and he was fact responsible for
15 reviving the individual and saving his life.

16 In summary, for all the factors I have listed --
17 Dr. Seiller has been severely punished already. More-
18 over, he faces the possibility of further punishments in
19 the form of divorce and deportation from the country.

20 Therefore we urge your Honor to sentence the
21 defendant to time served on the remaining count to allow
22 him to take care of his affairs with the INS and to leave
23 the country, and he is willing to agree to that final
24 provision as part of the sentence.

25 Thank you.

THE COURT: Defendant, you have a perfect right to address the Court before sentence is imposed. You may remain seated.

THE DEFENDANT: I don't want to say anything.

THE COURT: Very well.

I think the time has come when the record should be made clear without the slightest trace of ambiguity.

It has been my duty during the course of 36 years as a judge to mete out sentences and I believe by this time I know the difference between a human being so saturated with iniquity that he cannot succeed in throwing it off; it becomes as much a part of his makeup as his bloodstream. And the individual who is contrite, who sees the error of his deportment and strives to achieve a better ethical standard -- very often we find that a defendant is unaware of the many things that are uncontroverted which have come to the judge's attention and which the judge has given consideration to in connection with the imposition of sentence. And very oft judges, including this judge, are loathe to make mention of those debilitating factors or demerits, loathe to do it in open court, loathe to do it when a defendant is in physical pain, loathe to do it when they feel he has already been smitten, loathe to do it when there are others

1 in the courtroom who might for the first time learn some
2 of the secrets that the defendant has kept locked up.
3

4 And so it was that I did not discuss at the time
5 of the taking of the pleas a good deal that I would have
6 otherwise pursued had the defendant not come before me
7 in the physical condition that he then clearly demon-
8 strated.

9 For instance, I was overwhelmingly satisfied that
10 he had pled guilty to all three counts and when the time
11 came for a meticulous breakdown, the record will show that
12 when the Assistant asked that the defendant utter the
13 acts that he committed, so as to make sure that he knew
14 what he was doing when he pled guilty, the record will
15 show that I protested because I did not want the humilia-
16 tion to come to this defendant of having to say "I knew
17 this," "I did this" and "I was aware of the other."

18 And as often happens when the crucial words were
19 mentioned, this defendant ducked. He fenced.. And I was
20 aware of it. A judge doesn't become a fact-finder having
21 the power to render judgment in serious criminal cases
22 without a jury and stop being a fact-finder when he comes
23 to sentence.

24 He looks upon the defendant the way he would
25 look upon the defendant during the course of a trial.

He makes his evaluation depending upon what has been depicted and brought to the surface.

And so I erred, and plainly so, and the Court of Appeals was perfectly right when it said: You took an imperfect plea, Judge.

What I should have done is to say to Seiller: I'm not satisfied the way you put it. Go to trial or I'll put this over for a week. Make up your mind what you really want to say to the Court. With one breath you say "I am guilty, I understand the charge, I have great faith in my lawyer, I have talked with him at length, everything he said to me I understood, I withheld absolutely nothing from him."

And then in the next breath, play around with the words.

Not only do I follow the mandate of our Circuit Court but I bow, particularly in this case, for its insistence that you don't do it that way. Put it over or let him go to trial. And I have already benefited from the great wisdom shown by the Court of Appeals in this case because there has been a number of occasions since it handed down its opinion here when defendants, as very often is the case, begin to equivocate when it comes to such words as "I knew that the securities had been stolen,"

1 or "I knew this" or "I knew that." Everything else they
2 concede but when it comes to that particular word or its
3 equivalent, they shy away from it. And what I have done
4 since is to say, "I cannot accept your plea. I am not sat-
5 isfied. Go to trial." And without exception, without ex-
6 ception, they have asked the Court to put it over for an-
7 other day or two to give further consideration to the plea,
8 and I have acquiesced, and in every single case, they have
9 come forward with a veritable cataract of disclosure.
10

11 And so I am indebted to our learned Court for
12 another example of its -- of the high order of its wisdom.

13 In order to meet what becomes our duty on the
14 resentencing of this defendant on the only count with which
15 we are now concerned by way of sentence, and that is 71
16 Criminal 675, Count 3, I have gone into everything. I have
17 reevaluated, reconsidered, rather, each and every paper
18 and I make a part of this record a great deal of the material
19 that I did not feel I could utter in open court at the time
20 of sentence, and by that I mean the probation report, and
21 it becomes a part of this record.

22 Mr. Clerk, you will mark it as a Court's exhibit
23 right now. I hand you to be marked, as an exhibit, the
24 full report of Probation Officer Best which Mr. Young has
25 examined already and which Mr. Scar has examined for the

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government. Mark that, please.

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Please mark the updated probation officer's report which was also shown and examined by Mr. Young and by Mr. Sear.

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(Court Exhibit 2 marked.)

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THE COURT: You will also mark as a Court exhibit Mr. Young's sentencing memorandum.

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(Court Exhibit 3 marked)

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THE COURT: You also will mark as a Court exhibit and a part of this very proceeding now being conducted the nine-page letter from this defendant bearing a date of May 18, 1972.

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(Court Exhibit 4 marked)

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THE COURT: You will please also mark as a Court exhibit and make a part of this proceeding the letter by this defendant asking for a reduction of the sentence heretofore imposed bearing date April 30, 1973, which we treated as a motion to reduce sentence pursuant to Federal Criminal Procedure 35 and which we denied and so informed the defendant on June 11, 1973.

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(Court Exhibit 5 marked)

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THE COURT: And, lastly, and at least for this time, mark as a Court exhibit the copy of our memorandum with respect to another application by the defendant with respect

to the sentence heretofore imposed, a memorandum dated January 24, 1973.

(Court Exhibit 6 marked)

THE COURT: I will, from Court's Exhibit 6, read what already appears in the opinion of the Court of Appeals and I feel today the same way that I felt when I wrote this last memorandum of January 24, 1973.

"Let the record show that having listened to the defendant, I'm content to state for the record that his alacrity of response and his show of intelligence that he demonstrated was based not only on what he said but also on his facial expressions, and as a fact-finder I am content that this defendant knows the full significance of what he has undertaken to do by taking a plea of guilty to each one of the three conspiracy charges, and accordingly I direct the Clerk to enter a plea of guilty as to each conspiracy charge contained in 71 Criminal 675 and a plea of guilty to the conspiracy charge set forth in 71 Criminal 676."

I quote that in particular to emphasize that I regarded this defendant at the time and still do as a man of superior intellectual achievement, but I hasten to add, who put that achievement and intellectual attainment to bad use.

This is Mr. Fraud. This is Mr. Operator. A man

1 who claims that everybody has set upon him and he is the
2 victim, not the culprit, not the offender. The judge is
3 condemned. The Assistant United States Attorney is con-
4 demned. Everybody is condemned.
5

6 In the letter already marked in evidence, the
7 detailed letter by the defendant, there isn't even an
8 avowal, to say nothing of a word or a phrase or a sentence
9 of contrition. Not at all. Nothing. He is the one
10 who has been outraged. He is the one who has been sinned
11 against but he never sinned.

12 That may be a line that you can cast upon those
13 who have not got the ability to respond but the judge
14 thinks he has the ability to respond, and he is responding
15 now.

16 I did not do it at the time of sentence for
17 the reasons I have already assigned. Something you really
18 would not understand. And that is sympathy. It put
19 restrictions on my tongue and therefore you felt that the
20 judge was an imbecile, unaware, and that you could use me
21 and put upon me the way you have so many people and gotten
22 away with it.

23 Your machinations, your operations were deep-
24 seated and for a very, very long time, and I entertain no
25 hesitancy at all in saying that I am convinced that it is

still a part of your makeup.

I am not dealing with someone who has offended the law and who comes in and asks for forgiveness and goes through an overwhelming recital or demonstration of contrition with the enormity of his offense and willing to make amends--"help me" -- we have no such person here.

The extent of his operations and the enormous amount of money that he was able to lay his hands on by connivance and two-timing and trickery is unbelievable, a veritable Kreuger.

These things we knew but we allowed our sympathy for the defendant's physical condition to cut down the enormous sentence by comparison that would have been his lot if it were not for our estimate of his physical condition and the fact that he had been stricken.

We still are sorry that he is physically ill. That is no answer to all that has accumulated with regard to the behavior of this defendant and his dangerous proclivities.

Let me tell the defendant in plain language that when a judge-- wipe that snicker off your face, Mister, it doesn't do you any good and it isn't becoming and I detect it. It is the reaction of these smart-alecky fellows that are clever. I have seen it over and over again. Just wipe it off and just listen, because I think I have got your

number. You are not going to deter me by your snicker.

When a judge comes to sentence a defendant who stands convicted by way of a plea or after trial, the judge has a right on the sentence to consider what other charges are pending against that same defendant even though he has not been found guilty either by plea or by trial with regard to those additional charges. In fact, the judge has a right to look to a trial record where a defendant after trial was acquitted and make an estimate of the defendant at the time of that trial that ended in acquittal. Any information that can be gleaned from that record is for the judge to take into consideration and weigh, and so while I have set aside your plea in two counts, there is nothing now that I come to sentence you on the third count to prevent me from recognizing a not guilty plea to two other counts and the additional information that I have which came from your lips before me with regard to those two counts in connection with which two counts you have entered a plea of not guilty.

So I have much more before me than I usually do which is nothing more than a recital of a charge with respect to which a not guilty plea has been entered.

I have heard you with respect to those two counts, not to the extent of finding you guilty of either

one of them but such information as you gave me when you spoke up with respect to those two counts.

I think that painful though it is, and now that the wraps are off as they must be on such an occasion, I would like to emphasize that the judge doesn't cease being a fact-finder when he comes to taking a plea or when he observes the conduct of the defendant with regard to any criminal charge.

It gives me an opportunity to evaluate that human being before me. I don't have to say anything. I acted -- I happen to speak out very often. Most judges take it all in, they remain silent. They make no comment. But to say that they have not observed and that they have not formed an estimate of the person is ridiculous.

I am afraid that's where you led yourself off the sensible path, Mister. You thought that just because I didn't give you line for line everything that was operating in my mind with regard to you that therefore you had fooled me.

You got a record and it is a record that shows the extent of your devilment.

November 23, 1951, Superior Criminal Court No. 3, Weisbaden, Germany: ten months in prison for attempted fraud through bankruptcy and embezzlement. Defendant was

also deprived of the right to work as a self-employed businessman for three years. Defendant completed service of prison term on 1-15-54 and began serving a three-year probationary period.

Next. July 4, 1958. Fined 50 German marks at the Custom House, Laurrach, Germany, for duty evasion.

Next. June 22, 1966, arrest warrant issued on charge of bankruptcy fraud. Defendant was charged with mishandling books of firms, Joe Seiller Limited, partnership and Erdmann & Company, that defendant operated in Weisbaden, Germany. Defendant also failed to file for bankruptcy when his firms were insolvent and excessively in debt.

Next. Defendant also mishandled the books of other companies. Milton M. Sperber & Company Limited and Kompass Film Company in Weisbaden and Mainz, respectively. Defendant illegally appropriated chattels belonging to other people and fraudulently misappropriated funds in the amount of 40,000 German marks for his own use; according to the District Attorney.

As a result of this and other illegal schemes for mishandling funds, arrest warrants were issued for defendant in 1961, 1962, 1963.

Defendant's explanation for the above is that

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2 he was an agent for the United States Government and could
3 not disclose the name of the agency for which he worked
4 because of national security reasons.

5 This appears to be another example of defendant's
6 conniving and his expertise at shifting responsibility for
7 his criminal deportment.

8 Now we come to his prior record in the United
9 States. We have the count to which we are addressing
10 ourselves with respect to the sentence and we have the
11 other two counts to which a plea of not guilty has been
12 entered. Then we have something more. We have this
13 defendant in 1970 in the Supreme Court here in Manhattan,
14 charged with grand larceny, possession of a forged instru-
15 ment and he was sentenced to two years.

16 Let's go to another factor relating to this
17 man's machinations and these relate to his application for
18 a permanent residence status.

19 When defendant was seeking to attain permanent
20 residency through the Immigration and Naturalization Service,
21 says the report, he was extremely active in attempting to
22 pressure the Immigration and Naturalization Service to pass
23 favorably on his application. Copies of letters submit-
24 ted on his behalf to United States Senators and the Special
25 Assistant to the President of the United States reveal

2 "rather heavy-handed attempts in manipulating these highly-
3 placed government officials to the defendant's advantage
4 through threatening the United States with loss of substan-
5 tial investment capital allegedly controlled by the defend-
6 ant for numerous interests which he represented professionally.

7 Further support of the Court's estimate that
8 this is a fraud, a manipulator, a faker, a conniver.

9 We had occasion in one of the exhibits already
10 marked by our good clerk to say to this defendant with re-
11 gard to his motions or what we considered as a motion to
12 reduce the sentence, we had occasion to say, and I quote
13 "We are compelled to brush aside as baseless and completely
14 without factual support the assortment of reasons defend-
15 ant now advances in support of the relief he seeks.

16 Typical of the reasons presented are two: that
17 at the time of the plea he was in a state of debilitated
18 health which rendered him unable to think properly and that
19 a language barrier interfered with full comprehension of
20 the total significance of the proceeding.

21 As to the former, not the slightest indication
22 was discernible of any limitation whatever in respect of
23 his thinking processes and as to the latter, his answers,
24 although tinged with a Teutonic inflection, he is a German
2 national, flowed freely. He had no need to search for

the proper word and his pertinent responses pounced upon the questions to which they related. Indeed, defendant was in full command of the situation."

That was another example where he tried to put over a fast one. He thought the judge had not observed and had not made an estimate that he was nothing but a faker and a clever one at that.

The point I am emphasizing is that ever since we dealt with this defendant on the prior occasion, not a single word has come from him in which he has shown contrition even with respect to what he did as to the count in connection with which we are now about to impose sentence.

On the contrary, his letters have been full of blame of everybody and that he was the innocent victim and everyone is taking advantage of him.

I will come to what has been advanced here in open court with regard to deportation. I do not want to omit such factors as are in the defendant's favor. I repeat again that I am aware and I think quite forcefully and properly that the defendant has these physical impediments. That still operates and still is a significant factor. I'm not bound by any sentence heretofore imposed in Count 3. I can give the maximum if I choose to in the

1 light of what has been brought to my attention since the ap-
2 pearance of the defendant. I can reduce it. I am not
3 shackled.
4

5 I feel deeply sorry about the condition of the
6 defendant's mother in Germany, the conditions of her health.
7 I regard it as unfortunate and it is something to consider
8 that his own immediate family ties are in a state of dis-
9 ruption.

10 I have already received some information with
11 regard to the act Mr. Young properly made mention of, and
12 that is the conduct of this defendant with regard to a
13 fellow inmate recently. That stands him in good stead.

14 In effect, what we have endeavored to do in our
15 own limited fashion is to reveal the X-rays and to hold
16 it up to the patient so that he can see what we are talking
17 about.

18 We come now to what the situation is with regard
19 to deportation. I think the record should be very clear
20 on what happens so frequently when a judge considers ele-
21 ments other than, or factors, other than those relating to
22 the imposition of jail or a confined period of time by
23 way of sentence.

24 We are often asked, for instance, in fraud cases
25 involving income tax: Judge, will you give me a chance?

1 I admit I owe so much and so much. I can pay it in 30 days.
2 Or: Judge, this defendant is about to be disciplined as a
3 member of the bar. He faces disciplinary proceedings. Will
4 your Honor please take that into consideration? Or: Judge,
5 this man, my client is going to be deported and they have
6 a very good case on him, and I'm afraid that there is nothing
7 left but to capitulate. It is going to take a little
8 time to wind up the proceedings but that's going to be the
9 inevitable result.
10

11 Most of the time I find that having taken a
12 chance, to use the vernacular, most of the time the dis-
13 ciplinary proceedings never came into effect at all, the
14 deportation never happened, the repayment to those from
15 whom money was stolen has not taken place, and it is just
16 a method of stalling or asking the judge to be considerate
17 of something that has no real weight

18 The defendant asked for 90 days to wind up his
19 affairs. How does he know it is going to take 90 days?
20 When the 90 days are up - he didn't know, he will maintain
21 that such and such was what the judge in the divorce pro-
22 ceedings felt essential and it will therefore take another
23 six months to get it. "90 days is all I ask for."

24 Well, that is not impressive. It is nothing
25 tangible. It is nothing that has real meaning because it

2 may go from 90 days to 90 months. I am sure that this
3 defendant has no higher evaluation of America than he had
4 when he saw fit in his application to me for a reduction
5 of sentence, he said, in his own handwriting what I am
6 about to read into the record. He had a right to say it
7 but to say that this doesn't sum up his attitude toward
8 the country that gave him asylum is to close one's eyes
9 and I don't intend to do it. It is in his application
10 dated April 30, 1973. He includes the following:

11 "I wanted to leave this country of false slogans
12 and with people I am unable to understand."

13 And in another place, his condescension, the
14 habit he has of waving aside as of small consequence, ac-
15 cording to his superior intellect, what is presented to him.
16 He made a similar comment with regard to America.

17 Well, there really is nothing to compel him to
18 remain. I should think he is the one who is asking me to
19 consider the deportation proceedings. He is the one who
20 has said, through his lawyer today, that he is ready to
21 leave. I didn't inject it. He did. He asked me to
22 consider it in connection with the sentence.

23 I am quite positive that if under the same cir-
24 cumstances our positions were reversed, Seiller, you would
25 in sentencing, give the maximum in the light of all that's

2 been recited, but the fact that you don't understand
3 sympathy doesn't deter me from exercising it. The fact
4 that you don't appreciate or evaluate these attributes of
5 higher civilized deportment shouldn't make any impression
6 upon me and it doesn't.

7 For all the reasons I have recited and addressing
8 myself solely to the count before me on which you are about
9 to be sentenced, and I might add that that would have been
10 the same sentence at the time I sentenced you before,
11 whether there was one count or whether there had been five
12 counts, your behavior was the same diabolical, or of the
13 same diabolical nature. The fact that there were two
14 other counts made no, had no significance as far as I am
15 concerned. You would have received three years if there
16 had been only one count to which you pled guilty.

17 I am sentencing you again to three years on that
18 count, Count 3, and I will have the record reflect that
19 if you decide to consent to the deportation, and go about
20 it promptly, I will be inclined on a motion to reduce the
21 sentence just imposed, to reduce the sentence and possibly
22 go as far as reducing it to the time already served.

23 Mr. Young, have I made myself clear to you, sir?

24 MR. YOUNG: Yes, you have, your Honor.

25 THE COURT: Mr. Sear, have I made myself clear to

1 lz:mg

27

2 you?

3 MR. SEAR: Yes, your Honor.

4 I wouldmake two quick requests. First of all,
5 I think the record should reflect, I believe, what your
6 Honor is ordering; that Mr. Seiller, the marshals sur-
7 render Mr. Seiller to the custody of Immigration and
8 Naturalization for deportation to take place --

9 THE COURT: Sir, I don't want any of those things
10 now. If you have anything to do with regard to it, you
11 write a letter, confer with Mr. Young. I will be glad
12 to speak to both of you. I will do anything you wish.
13 Don't start making statements as to what I intend.

14 I have made it very, very clear what the sen-
15 tence is and everything -- the time already spent by
16 this defendant with regard to the prior sentence applies
17 to the sentence just imposed, but with regard to future
18 operations, I made it clear that Mr. Young wouldhave to make
19 his motion to reduce the sentence I have just imposed, and
20 until he does it, there is no need to take up any of these
21 things, is there?

22 MR. SEAR: No, your Honor.

23 I willmake-- I will write a letter to your Honor--

24 THE COURT: I don't care what you do. I will
25 say, if you don't mind, Mr. Sear, please forgive me for

1 being so determined, I don't want to add anything other
2 than what I have said. This is it. I have given him a
3 three-year sentence. The time that he has already served
4 is, of course, to apply to that three-year sentence, and
5 I have said I will entertain a motion to reduce the
6 sentence just imposed, and that I might even go to the ex-
7 tent of reducing it to the time already served if the
8 defendant consents to deportation.
9

10 Isn't that clear?

11 MR. SEAR: Yes, your Honor.

12 THE COURT: That's all. You think that out and
13 act accordingly rather than sending letters and telling
14 me this, that, and the other. You do what you think the
15 government should do if you think the government should do
16 anything. My suggestion would be that you both get to-
17 gether and confer with one another in the event that Mr.
18 Young decides such an application should be made to the
19 Court. If there is no such application, then there is
20 nothing further for you or for me to do, is there, really?

21 MR. SEAR: That is correct, your Honor.

22 Also, your Honor, at this time the government would
23 move to dismiss the two counts to which Mr. Seiller just
24 pled not guilty, that is, Count 1 of Indictment 71 Criminal
25 675 and Count 1 of Indictment 71 Criminal 676.

1 THE COURT: Decision reserved.

2 MR. YOUNG: Your Honor, could I just apply for
3 an order that Dr. Seiller be kept temporarily at the
4 Metropolitan Correctional Center while we make the ar-
5 rangements on the deportation; otherwise, he may be
6 transferred back to Springfield immediately, and it will
7 make it very difficult for us to expedite it.
8

9 THE COURT: Mr. Young, my estimate of your
10 client has been made, I hope, clear. I feel the enormity
11 of his -- the nature of his character and, frankly, I
12 don't want other people in this country to be victimized.
13 I still think he carries that characteristic that is ex-
14 tremely dangerous, not only to him, but to others.

15 I think the better part of wisdom would dictate
16 that both counsel and the judge go into the robing room
17 and talk for a few minutes and maybe get some of these
18 worrisome angles out of the way, and will the marshal keep
19 the defendant here and the Court is in session until I
20 come back to the bench.

21 Do you understand that, Marshal?

22 Come on in, counsel.

23 (In the robing room)

24 (Discussion off the record)

25 THE COURT: We have had a discussion off the

2 record with my two law clerks present and Mr. Young and
3 Mr. Sear, and I endeavored to make it very brief, to ex-
4 plain that there was no personal vindictiveness here what-
5 soever, but I felt the time had come to hold up the mirror
6 to this defendant, that I am very much interested in re-
7 habilitation, that I have seen none of that in evidence with
8 regard to this defendant.

9 I went further and said that if the defendant
10 decides to consent to the deportation, and I gather that
11 he seems to be inclined to look in that direction as a
12 possibility, if he does, why, then, certainly I want counsel
13 to bring on a motion to reduce the sentence just imposed
14 and if all is in order, I see absolutely no reason right
15 now why I should hesitate to reduce the sentence to the
16 time already served.

17 If the motion papers are complete, it seems to
18 me, and with an answer from the government with respect to
19 those papers, it should be done expeditiously, I would be
20 inclined, if all is in order, to sign an order reducing
21 the sentence to time already served within 24 hours after
22 the papers are placed in my hands.

23 That I place upon the record. We will go
24 outside, gentlemen, and I will state that, state on the
25 record that the defendant is to remain here in Manhattan

until the close of next Tuesday.

Is that fair enough, Mr. Young?

MR. YOUNG: Yes.

THE COURT: Is that fair, Mr. Sear?

MR. SEAR: Fine, your Honor.

(In open court)

THE COURT: Mr. Seiller, we had a talk in the robing room and it relates to what has already been placed on the record.

Your lawyer is going to talk to you with regard to this deportation matter and I just reiterated in the robing room what I said out in open court, that if you decide to consent to deportation, which you more or less indicated that you might very well do, you having brought the matter of deportation and called it to my attention, I will act on the motion to reduce the sentence to the time already served and act on it expeditiously.

I order that this defendant remain here, Marshal, until the close of next Tuesday, which means the 29th of June. Whatever steps his attorney takes will depend on our future order with regard to this defendant remaining in Manhattan but for the present moment, please understand it is the direction of the Court that he remain here in Manhattan, confined here until the close of the 29th of

2 June, next Tuesday.

3 Is there anything else, gentlemen, before I
4 leave the bench for the time being?

5 MR. YOUNG: Could I just request that I be given
6 an opportunity to have a brief interview with my client
7 in the back room?

8 THE COURT: Marshal, allow the attorney every
9 courtesy. He has done his job as a lawyer to the hilt
10 and I have great respect for him. Let him talk, make it
11 convenient, take them anywhere you wish so he doesn't have
12 to go to the Correction Center quarters-- are you allowed
13 to do that under the rules?

14 THE MARSHAL: Your Honor, they frown on it
15 downstairs but if it is all right with Mr. Young, I can
16 make arrangements in Room 334, if that's all right with
17 him.

18 THE COURT: 334. Will you do that, Marshal? It
19 is a courtesy to me because I want to extend that courtesy
20 to him. Is that understood now?

21 Very well, is there anything else, Mr. Young?

22 MR. YOUNG: No, your Honor.

23 THE COURT: Is there anything else?

24 MR. SEAR: No, your Honor.

25 THE COURT: Thank you, gentlemen.

..

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATE OF AMERICA

-against-

JOSEPH SEILLER, GABRIEL
INFANTI and NATHAN KURTZ,

Defendants.
-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA

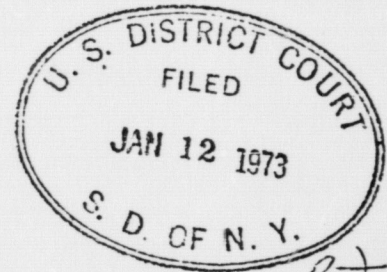
-against-

JOSEPH SEILLER, WILLIAM SILVERMAN
ROBERT COHN, MICHAEL SALVAGGIO
and STEPHEN SALVAGGIO,

Defendants.
-----X

No. 71 Cr. 676

NOTICE OF MOTION



No. 71 Cr. 675

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon all of the proceedings heretofore had, the indictments herein, and upon the affidavit of JOSEPH SEILLER, duly sworn to the // day of January, 1973, a motion will be made before the HONORABLE JUDGE IRVING BEN COOPER, United States District Court Judge, on the 19th day of January, 1973, at 10:30 A.M. or at such time as counsel can be heard for an order withdrawing the pleas to the indictments above set forth above and for such other, further and different relief as may be just and proper in the premises.

Dated: New York, New York
January 11, 1973

Yours, etc.

CALLY & CALLY, ESQS.
Attorneys for Defendant
Joseph Seiller
150 Broadway
New York, New York 10038

TO: HON. WHITNEY NORTH STYMOUR, JR. Telephone No. 964-5781
United States Attorney
United States Courthouse
Foley Square
40 Centre Street

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

UNITED STATES OF AMERICA

No. 71 Cr 375

-against-

MOTION FOR WITHDRAWAL
OF PLEA OF GUILTY

JOSEPH SEILLER, WILLIAM SILVERMAN
ROBERT COHN, MICHAEL SALVAGGIO
and STEPHEN SALVAGGIO,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

No. 71 Cr 375

JOSEPH SEILLER, GABRIEL INFANTI,
and NATHAN KURTZ,

MOTION FOR WITHDRAWAL
OF PLEA OF GUILTY

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH SEILLER, being duly sworn says:

That he is one of the above-named defendants, and moves the Court to withdraw his plea of guilty as to each of the above named indictments on the ground that he is not guilty of the offenses charged in each of the said indictments, and that such a plea of guilty was entered improvidently, while the said defendant in a state of debilitating health, which rendered him unable to think properly, having to move on crutches or canes, because of his sickness keeping him in a state of imbalance.

Since the said pleas were entered as to each of the said indictments, the awareness of his acts have become more pronounced and he has sought advice of other expert counsel in such matters, and they have indicated to him that he was ignorant of his rights under the circumstances, and that, therefore, the consequence of his acts were made under a mistake or misapprehension. Moreover, it is noted that the United States Attorney withdrew its indictment No. 71 Cr 375 as against all parties. In indictment No. 71 Cr 375 the circumstances therein set forth and not

guilty because there was no conspiracy, therefore, I cannot be said to conspire with myself. In the Indictment No.

I had no part in the said crime or crimes committed by others, therefore, it would appear that if necessary I must proceed to trial to prove my innocence. As aforesaid, the mistaken impressions of the law, my illness and the dire circumstances which I found myself in caused to dull my senses and understanding. Moreover, there was no plea bargaining herein.

That attached hereto and made a part hereof are copies of the aforesaid indictments. That apparently since I have a language barrier, being versed in the German language, and, although I understand some basic English, there is an area of exchange that has been difficult for me to understand. Consequently, he sought the advice of attorneys who are bilingual and understand German fluently and are capable of expressing the law more clearly to the said deponent, he has been made aware that his acts were not those of a guilty person, and should not have taken a plea of guilty.

Presumably your deponent has informed the Probation Department of his circumstances and that said probation officer may be of the same opinion as that of the affiant herein. While my present counsel thought that this was the best avenue of approach to the solution in each of the indictments, as he didn't understand the full import of the situation, he went along with the plea.

Consequently, your deponent under all of the circumstances and occurrences should be given an opportunity to withdraw his guilty plea heretofore entered and in lieu thereof enter a not guilty plea and set the same down for trial.

Sworn to before me this

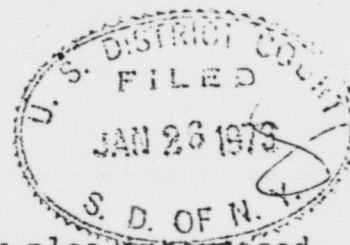
11th day of January, 1978.

[Signature]
JAMES T. KELLY
Notary Public, New York
No. 1457-110
County of Queens, New York
Commission Expires 12/31/87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: UNITED STATES OF AMERICA :
: :
: -against- : 71 Cr. 675
: : 71 Cr. 676
: JOSEPH SEILLER, et al., :
: : MEMORANDUM
: Defendants. :
: :
-----X

IRVING BEN COOPER, D. J.



We distinctly recall the guilty plea interposed on May 1, 1972 to each of three conspiracy counts (Indictments 71 Cr. 675, 676) by defendant Seiller who now seeks to be relieved thereof. His appearance before us yesterday (January 23, 1973) in open court (at which time a date for sentence was fixed) reinforces our recollection.

The official court reporter's minutes clearly delineates the unequivocal understanding by movant of each and every step involved in, and the full scope of, the plea-taking procedure. What those same official court minutes do not reveal is the vocal impression imparted by interrogation and response to the words reflected therein and which gave positiveness to the entire proceedings then under way. The defendant at all times was impressively alert, unwavering, distinct and in full control while undertaking to

respond to the questions propounded. We are constrained to and do repeat what we then concluded (official transcript of May 1, 1972, p.21):

Let the record show that having listened to the defendant, I am content to state for the record that his alacrity of responses and his show of intelligence that he demonstrated was based not only on what he said, but also on his facial expressions and as a fact finder I am content that this defendant knows the full significance of what he is undertaking to do by taking a plea of guilty to each one of the three conspiracy charges, and accordingly, I direct the Clerk to enter a plea of guilty as to each conspiracy charge contained in 71 Cr. 675 and a plea of guilty to the conspiracy charge set forth in 71 Cr. 676.

The papers are quite bare of factual assertion; that which is presented is unimpressive and unconvincing.

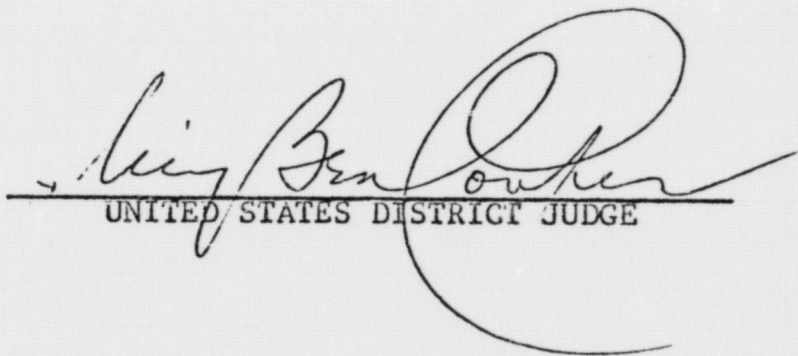
We are compelled to brush aside as baseless and completely without factual support, the assortment of reasons defendant now advances in support of the relief he seeks. Typical of the reasons presented are two -- that at the time of the plea he was in a state of debilitating health which rendered him unable to think properly and that a language barrier interfered with full comprehension of the total significance of the proceeding. As to the former, not the slightest indication was discernible of any limitation whatever in

respect of his thinking processes. And as to the latter, his answers, although tinged with a teutonic inflection (he is a German national), flowed freely, he had no need to search for the proper word, and his pertinent responses pounced upon the questions to which they related. Indeed, defendant was in full command of the situation.

We suspect that the instant application was precipitated by the acquittal recently of one of defendant's co-conspirators. In any event, on the merits the plea interposed to each of the three conspiracy counts by this defendant on May 1, 1972 must stand and his instant motion is denied in all respects.

SO ORDERED:

New York, N.Y.
January 24, 1973


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,
Plaintiff,
- against -
DR. JOSEPH SEILLER,
Defendant.

Docket No.: 71 Cr 675
71 Cr 676

AFFIDAVIT IN SUPPORT
OF MOTION TO VACATE
JUDGMENT

State of New York)
County of Dutchess) ss.
County of Dutchess)

74 Cr. 1595

DR. JOSEPH SEILLER, being duly sworn, deposes and says:

1. I was the defendant in the above entitled proceedings. I was originally arrested in 1969 and in 1974 three indictments were handed down by a grand jury. One indictment against myself and one William Silverman, New York, was about the sale of a stolen treasury bill in the value of \$ 1 million. The investigation established clearly, that said negotiable instrument was offered open and under normal market conditions because I was under the impression, that the holder of said note was its rightful owner. I never held, owned or possessed said note, but I was a third party and worked on the sale for the purpose to earn a commission. As I was informed by agents of the US-Treasury that said note was a part of a theft from a New York City bank, I assisted out of my own free will to return the note from abroad to the US, my assistance was at my own expense.

The case against my co-defendant, William Silverman, was discontinued.

The second indictment was for the arrangement of a sale of securities in Germany to an Arabic buyer. I never knew the owners or sellers and first met them after their arrest. This transaction was brought to me by two of my former partners, Mr. Allan C. Kane and Mr. Stanley Wyman, both of New Jersey, who were experts in stock transactions and claimed that the sale was rightful and legal. Mr. Wyman was called to testify before a grand jury, but he took the 5th amendment, as per my best knowledge, he and Mr. Kane were never even questioned by the Treasury Department or the Federal Bureau of Investigation. The owner and sellers of said securities, which also proved to be stolen at a later point, were a Mr. Gabriel Infanti, whom the Asst. U.S. Attorney described as a person with strong ties to organized crime, and Mr. Nathan Dunn, an attorney from New Jersey. I provided the buyer with a clearing system under which no funds could have been possible. Thus, I

cont. from page 1

actually led to the discovery of the theft, respt. the intended sale of these securities. The two co-defendants, Gabriel Infanti and Nathan Kurz were tried and given a suspended sentence of 2 years each imprisonment and a fine of \$ 5,000 each.

In both cases, an attempt was made to trick me into transactions, in which I would have been the debtor as soon as at any time the buyers would have discovered, that said securities were stolen. I was the only party they could have claimed compensation from, thus, in both cases, I was the intended victim.

The third indictment was for the attempted sale of stolen or forged securities by William Silverman et al to a certain Walter Reed, an informer of the F.B.I. I was in this case only the introducing party. The case was tried against William Silverman and the jury found him not guilty. Subsequently the court suggested to discontinue the case against all other defendants and the US-Attorney obliged.

I was advised to take a plea of guilty in the above entitled two cases and was sentenced to a three years imprisonment, to run consecutively to a State sentence of 2 - 7 years, which is under appeal

2. I lost my equilibrium in January 1971 and I am since said time without control of my balance. I was in several hospitals in New York city for exploration and I am in hospitals since my imprisonment by the State of New York in January 1973. I am a native of Germany and served the government of this country from 1947 till 1964 in a capacity which is connected with the national security of this country and in which I was taken under oath, not to make any disclosures to anyone at any time. I am not in complete command of the English language. Besides the US-Government. I served in the capacity of an economist such distinguished persons as the late Pres. John F. Kennedy, the King of Saudi Arabia, the Shah of Iran, the Presidents of India, Egypt, Austria and the Sudan, furthermore, I served in the same capacity numerous governments in Europe, Africa, Asia and the Americas. Even in the profession in which I was active at my arrest, an economic consultant for international business transaction, I was never educated or experienced in questions of public stock or securities, because in Europe, different than in this country, all such transactions are handled by banks and the average person does not have or at least did not have while I was in Europe any intimate knowledge about such transactions. Thus, I had to rely on the word of others

even by providing just accommodations for such transactions. The US-Attorney was fully aware of the situation, but made use of the lack of knowledge and ignorance of myself to initiate a cruel and nerve-wrecking investigation, instilling fear in me, especially after I was permanently told, that the full force of the law would fall on me if I did not cooperate. I cooperated as far as possible with the US-Attorneys office and was, in a final interview, told, that the court would be made aware of my cooperation and that I could expect leniency. It was suggested, that I should take a "guilty" plea on conspiracy only, without overt charges. My then attorney, James J. Cally, Esq., told me, that the most I could expect would be a suspended sentence. He advised me to take the plea, because he was convinced that I was unable to stand the pressure of a trial under the health conditions I was in at the time. I did not have any specific understanding of the federal law, nor did I know what a guilty plea could mean to me. As I found out at a later time through other counsel, I asked Mr. Cally to withdraw my guilty plea and that I would be allowed to stand trial. A motion to that effect by Mr. Cally was denied by the court. During the actual sentencing, the Asst. US-attorney made no mentioning of my cooperation with him, nor did he ask for any leniency.

I state, that my plea of guilty was not truly voluntary, because I did not possess the understanding of the law in relation to the facts, especially after I was and still am convinced, that the US-attorney was fully aware of the fact that I was the intended victim in the two cases in which sentence was passed. (394 U.S.466) As the court asked me before sentencing if I had something to say, I was trying to explain the situation, which I am sure would have influenced the findings of the court, but the sentencing judge interrupted me and gave me a lecture after which, in the state of tension I was under and on account of the stress I had suffered for quite a period of time, I was unable to return to my thoughts and to express what I wanted to say. The US-Attorney and the court must have been aware of my health condition, at the time, I was under the care of a neurologist and a psychiatrist and at least the F.B.I. knew that I was scared most of the time, because they came at one time to my residency to visit me.

3. U.S. ex. rel. Elkins -vs- Hillman; US-District Court S.D.N.Y. (65 Civil 3473) June 13, 1965 states: "The court found that a guilty plea was induced by coercion, threats or otherwise

cont. from page 4

a guilty plea, there would be no right to appeal.

U.S. -vs Deans 456, F.2d 983 holds: "Mandatory time limit for perfecting appeal does not begin to run until defendant is actually notified of his right to appeal". After I have never been actually notified, I should still have the right to appeal the sentence on the grounds mentioned heretofore.

In Johnson -vs- US; 44 Tex 241 F 2d 60 and

People -vs- Melton; 25 NY2d 650 261 App Div. 400

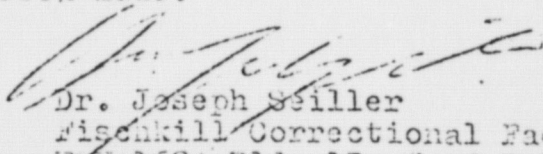
the courts state, that powers exists in the trial court on sufficient cause shown, to modify, change or revise its sentence or judgement.

I am willing to stand trial if the Court so decides, but I do not want to cause unnecessary expenses and could enter into a compromise solution, under which I would leave the country with my family within 60 days after my release from prison and if the court so decides, there would be no further action necessary. I feel, that I was not treated as an equal under the law and that the punishment given to me was cruel and unusual, considering all circumstances.

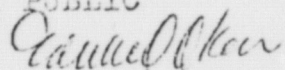
WHEREFORE, I ask that an order be made and entered herein; that I be present at the hearing of this motion pursuant to Title 18 U.S.C.Sec. 2255 or writ of error coram nobis, that after such hearing the plea of guilty and sentence heretofore entered be vacated and set aside and that I be rearraigned for all of which no previous application has been made.

Sworn to before me this

1 day of Apr, 1974


Dr. Joseph Seiller
Fischkill Correctional Fac.
Box 162, Bldg 13, Ward D 1
Box 307
Beacon, N.Y. 12503

NOTARY PUBLIC



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

File
74-CV-1595

UNITED STATES OF AMERICA :

-v- :

JOSEPH SEILLER et al., :

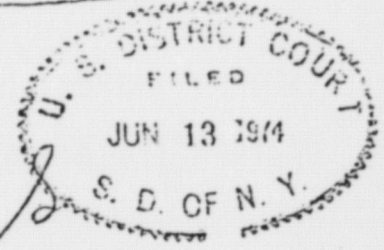
Defendants. :

AFFIDAVIT

71 Cr. 675

71 Cr. 676

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)



MAURICE M. McDERMOTT, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and am in charge of and familiar with the facts of the above entitled cases.

2. I make this affidavit in opposition to defendant Joseph Seiller's motion to vacate his sentence imposed as a result of his pleas of guilty to the conspiracy counts of the above-entitled indictments.

3. Indictment 71 Cr. 676, in two counts, was filed on June 23, 1971. Count Two charged Seiller, Nathan Kurtz and Gabriel Infanti with transporting stolen securities valued at \$5000 or more in foreign commerce in violation of Title 18, United States Code, Section 2314. Count One charged the same three defendants with conspiring so to do. On May 1, 1972, defendant Joseph Seiller pleaded guilty to Count One.

4. Indictment 71 Cr. 675, in three counts was also filed on June 23, 1971. Counts One and Two charged defendant Seiller and William Silverman with transporting stolen securities valued at \$5000 or more in foreign commerce and with conspiring so to do. Count Three charged Seiller, Silverman, Michael Salvaggio, Stephen Salvaggio and Robert Cohn with a separate conspiracy to transport stolen securities valued at \$5000 or more in foreign commerce. On May 1, 1972 defendant Seiller pleaded guilty to Counts One and Three.

5. On January 11, 1973 defendant Joseph Seiller moved to withdraw the aforementioned guilty pleas. This motion was denied on January 24, 1973 (See Memorandum of Judge Cooper attached hereto as Exhibit A).

6. On March 21, 1973, defendant Joseph Seiller was sentenced to a term of imprisonment of three years on each count to run concurrently with each other, but consecutive to a New York State sentence which defendant Seiller is presently serving.

7. The present application is little more than a rehash of the claims which were made and rejected on his earlier motion to withdraw his guilty pleas, namely, that he was ill at the time of his plea, that he had trouble understanding English, and that he wasn't versed in American jurisprudence. The Court specifically found that these claims were 'baseless and completely without factual

support." The only variations on this theme that the defendant now interjects are vague, conclusory allegations that he 'cooperated' with the Government and that the Government failed to make this cooperation known to the sentencing judge and also failed to ask for leniency on his behalf as he had been allegedly promised. Defendant also claims that his attorney said the most he "could expect would be a suspended sentence".

7. Defendant Seiller, accompanied by his attorney appeared voluntarily in your deponent's offices on one or two occasions on or about the date he entered his guilty pleas (May 1, 1972) for the purported purpose of cooperating with the Government in the prosecution of his co-conspirators Kurtz and Infanti, whose trial was scheduled to begin shortly (This trial began on May 8, 1972 before the Honorable Irving Ben Cooper and a jury). The net result of these discussions was that your deponent concluded that defendant Seiller would not be a credible witness because of his evasiveness and his consistent attempts, even in the face of the evidence to the contrary, to minimize his own criminal involvement in three separate schemes to dispose of millions of dollars of stolen securities. As a result thereof, he was never called as a witness against any of his co-defendants.

8. Certainly, at no time during these discussions did your deponent tell defendant Seiller he could

expect the Court to treat him leniently, nor did your deponent say that the Government would request such treatment for him, as seems to be implied in his moving affidavit (p. 3). At best, if the discussions touched it all on the consequences of cooperation with the Government, the defendant would have been told the following in accordance with your deponent's immutable practice: That the Government can in no fashion guarantee, nor would it attempt to guarantee, or seek assurances as to a defendant-witness' sentence; that this is a matter solely within the province of the sentencing judge; that while it would seem reasonable that the sentencing court would be more favorably disposed to a person who has made a clean breast of his wrong-doing and has attempted to help the Government in the prosecution of his cohorts, this was by no means certain; and that if the witness testified truthfully, candidly, and fully, this would be made known to the sentencing judge.

9. Defendant Seiller's likewise belated claim that his attorney James Cally said the most he "could expect would be a suspended sentence is unequivocally denied by Mr. Cally (See affidavit of Mr. Cally attached hereto as Exhibit B) and in light of his past claims, which have been rejected by the court as being without basis in fact, it is inherently suspect on its face.

10. While the Government maintains that the defendants' present allegations are wholly without substance,

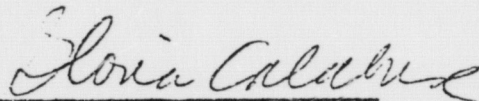
it could be argued in light of the authorities in this circuit, e.g. Dalli v. United States, Slip. Opin. 1391, 1394, ___F.2d___, (2d Cir. Jan. 14, 1974); Taylor v. United States, 487, F.2d 307 (2d Cir. 1973), that these allegations raise questions of fact that must be resolved by an evidentiary hearing. Consequently, the Government does not oppose the holding of a hearing.

WHEREFORE, the Government respectfully prays that, following a hearing, the defendant's motion be in all respects denied.



MAURICE M. McDERMOTT,
Assistant United States Attorney

Sworn to before me this
10th day of May, 1974.



GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1975

EXHIBIT A

respond to the questions propounded. We are constrained to and do repeat what we then concluded (official transcript of May 1, 1972, p.21):

Let the record show that having listened to the defendant, I am content to state for the record that his alacrity of responses and his show of intelligence that he demonstrated was based not only on what he said, but also on his facial expressions and as a fact finder I am content that this defendant knows the full significance of what he is undertaking to do by taking a plea of guilty to each one of the three conspiracy charges, and accordingly, I direct the Clerk to enter a plea of guilty as to each conspiracy charge contained in 71 Cr. 675 and a plea of guilty to the conspiracy charge set forth in 71 Cr. 676.

The papers are quite bare of factual assertions that which is presented is unimpressive and unconvincing.

We are compelled to brush aside as baseless and completely without factual support, the assortment of reasons defendant now advances in support of the relief he seeks. Typical of the reasons presented are two -- that at the time of the plea he was in a state of debilitating health which rendered him unable to think properly and that a language barrier interfered with full comprehension of the total significance of the proceeding. As to the former, not the slightest indication was discernible of any limitation whatever in

respect of his thinking processes. And as to the latter, his answers, although tinged with a teutonic inflection (he is a German national), flowed freely, he had no need to search for the proper word, and his pertinent responses pounced upon the questions to which they related. Indeed, defendant was in full command of the situation.

We suspect that the instant application was precipitated by the acquittal recently of one of defendant's co-conspirators. In any event, on the merits the plea interposed to each of the three conspiracy counts by this defendant on May 1, 1972 must stand and his instant motion is denied in all respects.

SO ORDERED:

New York, N.Y.
January 24, 1973

IRVING BEN COOPER

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

-against-

DR. JOSEPH SEILLER

Defendant

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.: -

JAMES J. CALLY, being duly sworn says:

That he is an attorney at law duly admitted to practice before this and did represent the movant herein and having read the affidavit on his motion pro se left me rather stunned, especially since he stated that I told him that he could expect a suspended sentence for his cooperation with the authorities.

That statement was never made by the affiant herein to the movant, moreover, no promises or representations were made to the said defendant by the deponent. As a matter of fact during his troubled period your deponent represented him without any compensation. Apparently, his circumstances has changed from that of gratitued to one of smear; which certainly does not speak well of the defendant.

Dated: New York, New York
May 10th, 1974

*Sworn to before me the
10th day of May, 1974
Daniel H. Cally*

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOSEPH SEILLER

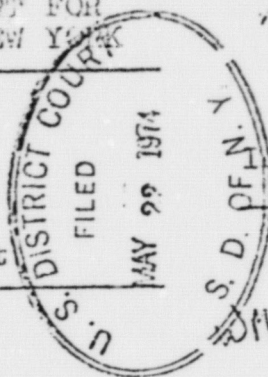
Defendant

STATE OF NEW YORK
COUNTY OF DUCHESS

AFFIDAVIT

REPLY TO US-ATTORNEYS
RESPONSE

PRO SE 74 Civ 1595
(Judge I.B.Cooper)



DR. JOSEPH SEILLER, being duly sworn, deposes and says:
I received the opposing motion of the US-Attorney dated on
May 10th, 1974 and having no counsel to represent me, I would
like to clarify certain facts voiced in said opposition:
1.) The description of the two indictments in question is
correct, however, the US-Attorneys office fails to mention cer-
tain facts which support my allegation of having been under
stress and pressure as I took my guilty plea.
2.) As the US-Attorney well knows from investigations, in
the indictment 71 Cr 676, I was never in any contact with
the defendants Gabriel Infanti or Nathan Kurtz prior to my
arrest. I did not see the securities in question and my contact
with Infanti and Kurtz were exclusively through Mr. Allan C.
Kane and Stanley Wyman. I was told, that the securities and the
ownership could be checked by an American stock brokerage house
and an American bank with a branch in Frankfurt/Germany, thus,
had to assume that the securities were in the legal ownership of
the sellers. If Mr. Kane and Mr. Wyman would have been questio-
ned, this would have come to light. In my capacity as a business
consultant, I was employed to look first for a lender against
these securities and later for a buyer willing to pay in Euro-
Dollar at a discount rate because the market at the given time

started to go down. I found this buyer and took every safeguard to protect his interest. It was my additional duty to arrange a part of the payment in Germany and to bring another part into this country. For this, Messrs. Kane, Wyman, myself and my German agent were to get a normal commission. I described this transaction to the party openly to the parties in Germany and did not take any steps which could support the view that I knew the securities were stolen or forged or whatever. Mr. Wyman, as questioned before a grand-jury too the protection of the 5th amendment and refused to testify. Mr. Kane was never questioned. The US-Attorney from the beginning just assumed my criminal participation and guilt, in spite that the facts should have made anyone aware that my participation in this transaction was a normal business service, not knowing the sellers or being an expert in securities, and not being a principal in the deal, I had no means to check on the facts presented to me and it was actually up to the buyer to investigate the legality of the securities.

If the transaction would have been completed and it would have been discovered that the securities were stolen, I would have been the party to be asked to make good for any potential loss of the buyer, thus, in accepting the transaction with the knowledge of its background would have been against my own material interest.

3.) During the time this transaction took place, I was in the process to negotiate a public underwriting of the corporation in which I held a controlling interest. Said underwriting would have converted my original investment of \$ 1.5 million in said corporation into a holding worth \$ 12 million. This was in fact the reason that Messrs. Kane and Wyman were associated with me, to effect said public underwriting. It does not make any common sense that I would have risked such a profit for the benefit of a small profit. As a matter of facts, the adverse publicity given my arrest caused me not only to lose the chance for a underwriting, but eventually the loss of my investment. This would also have come to light if Messrs. Kane and Wyman would have been questioned. The only thing I did was to make an introduction and give services to an assumed legal seller and a legal buyer, which was within the scope of my business.

4.) In indictment 71 Cr 675, the trial of William Silverman has established, that I was subjected by an informer of the FBI to blackmail. As the actual transaction took place, I was ill and hospitalized, it was for me impossible to know what actually transpired between the parties, not to speak of, that I only

knew William Silverman and not the other parties involved. The charges against William Silverman were dismissed after the jury found him not guilty and the case against all other defendants was discontinued on recommendation of the court. Thus, if the so called conspirators were not guilty, I do not understand how I can be found guilty to conspire with them in the same case.

5.) It is right that the notion is a rehash of former claims, it had to be, because the facts have not changed since. It is a fact that my knowledge on the English language is limited to the every day conversation and does include only very limited legal terminology. It is a fact that I was ill, the US-Attorney may remember that I had to be guided to his questioning, because I was unable to walk unaided. It is a fact that I was under emotional stress, I was under the care of a psychiatrist.

6.) The US-Attorney states now, that I would not have been a credible witness in a trial against Lessers: Infanti and Kurtz, but he failed to say, that my knowledge about the transaction was too limited to be of strong help to the prosecution. What ever knowledge I had, was freely given to the US-Attorney, that it was not sufficient was not caused by my unwillingness to cooperate but by the facts of the transaction. Mr. Rose and Mr. Wyman were not called as witnesses in the trial, in spite that they could

have been credible witnesses and knew more about the background of the transaction as I did. The prosecution considered me from the beginning as a guilty party, did not follow any leads which could have proven my innocence, instead, the full pressure of investigation and questioning was put on me, because I am a foreigner and because I did not have the knowledge and means to defend myself as an American would have had. I think, under these conditions, everyone would have suffered under the stress and would have been tempted to seek to avoid the additional stress of a trial, if another and fair method could be found to dispose of the cases.

7.) The US-Attorney describes correctly the manner in which he told me what the Government could do and could not do, except that he failed to mention the fact that he added, that the court would certainly be informed about my willingness to cooperate and that from experience, leniency could be expected as a result. A man who is accused of a crime and is under stress would accept such indication as a possibility to get a fair deal, without going into a trial, and this is exactly what I expected.

8.) The US-Attorney is also right in stating, that the former attorney in my case, Mr. James J. Cally did not tell me that the most I should expect was a suspended sentence; Mr. Cally, in a discussion between my wife, himself and myself prior to taking the plea was asked by my wife in my presence about what he thought I could expect in case I would take a plea, and he answered her in my presence that he thought I could expect a suspended sentence.

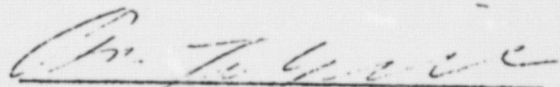
ce.

9.) While this may not be of interest to the court, there is also a human element involved why I apply to set my sentence aside, resp. change it into a suspended sentence or a sentence running concurrently with my state sentence, or exchange it for an agreement of voluntary departure from this country. Due to the uncertainty of the release of myself to my family, my wife tends to think that she cannot hold out and wait. We have a daughter which is now only 3½ years old, my wife is on welfare and she feels responsible for the support of herself and the little girl. If the period of incarceration could be shortened, there is hope that my family could be saved. But presently, due to the Federal Commitment Detainer, I am not eligible for furlough which I could receive under N.Y. State law, except when the Federal Court grants permission. Thus, there is no possibility to rehabilitate a strained relationship. A separation or divorce would put a heavy burden on my wife, our child and myself. It will be hard enough for me to start all over again after my release and to achieve in an honest way the support of my family, it would be almost useless to foster any hopes for a future without the support and presence of my family, because the purpose of ones life is not

only limited to a useless existence. The mistakes I made were caused by a lack of knowledge, wrong business judgements and ignorance but not by the intend to commit any crime or come by illegal means into possession of earnings which would not have been rightfully mine. I made mistakes and I am punished for them. If incarceration serves any other purpose but revenge, the best rehabilitation for me would be to let me return to my family and to work.

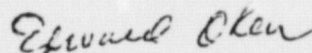
10.) For all the above mentioned reasons, it is respectfully requested to appoint an attorney on my behalf to present my case in a proper way, to grant me a motion hearing and to have ultimately ~~xxx~~ my sentence set aside, because I am convinced, if the court would have known all the facts, I would not have received such a harsh sentence which constitutes without any doubt a cruel and unusually hard punishment for a minor offence.

WHEREFORE, the defendant respectfully prays, that his motion for a hearing and the changes applied for may be granted.



Dr. Joseph Seiller
E&H 162, Bldg 13, Ward D 1
Box 307
Beacon, New York 12508

Sorn to before me, this
18th day of May, 1974



EDWARD OLEN
NOTARY PUBLIC, State of New York
My Comm. Expires March 17, 1975

cc.:

Hon. Paul J. Curran
U.S. Attorney
Southern District of New York
US-Courthouse, Foley Square
New York, N.Y. 10007

FILED
JUN 13 1974

S. D. OF N. Y.

Petitioner brings this action pro se under 28 U.S.C. §2255 to vacate his judgment of conviction on the ground that his plea of guilty was not voluntary. He gives various reasons for this motion, most of which were disposed of in our memorandum opinion of January 24, 1973, wherein we referred to them as "baseless and completely without factual support." (Page 2).

In the motion before us now, petitioner alleges certain new grounds: that he was told he could expect leniency from the Court in return for his cooperation with the Government, and that his attorney told him that the most he could expect at sentence would be a suspended sentence.

These new grounds are forcefully denied in affidavits submitted by the Government and petitioner's attorney. Petitioner's reply thereto is without substance -- words that are hollow and consequently unpersuasive.

Under the facts and circumstances here, petitioner's papers are clearly insufficient to warrant a hearing and fail to meet the test of the Second Circuit in Taylor v. U.S., 487 F.2d 307 (2d Cir. 1973). See Dalli v. U.S., 491 F.2d 758 (2d Cir. 1974).

Accordingly, petitioner's motion is denied in all respects.

SO ORDERED:

New York, N.Y.
June 12, 1974

U. S. D. J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 804—September Term, 1974.

(Argued March 27, 1975 Decided December 1, 1975.)

Docket No. 75-2002

JOSEPH SELLER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before :

MULLIGAN and TIMBERS, *Circuit Judges,*
and THOMSEN, *District Judge.**

Appeal from an order entered in the Southern District of New York, Irving Ben Cooper, *District Judge*, denying a motion to vacate a judgment of conviction and concurrent sentences following pleas of guilty to three counts of conspiring to transport stolen securities in foreign commerce

Affirmed as to one conspiracy count but remanded for reconsideration of sentence on that count; reversed as to the other conspiracy counts and remanded for repleading to those counts.

* Hon. Rozzel C. Thomsen, Senior United States District Judge, District of Maryland, sitting by designation.

MICHAEL YOUNG, New York, N.Y. (William J. Gallagher, The Legal Aid Society, Federal Defender Services Unit, New York, N.Y., on the brief), *for Petitioner-Appellant*.

THOMAS H. SEAR, Asst. U.S. Atty., New York, N.Y. (Paul J. Curran, U.S. Atty., and Lawrence S. Feld, Asst. U.S. Atty., New York, N.Y., on the brief), *for Respondent-Appellee*.

TIMBERS, *Circuit Judge*:

On this appeal from an order entered June 13, 1974 in the Southern District of New York, Irving Ben Cooper, *District Judge*, denying without a hearing a motion pursuant to 28 U.S.C. §2255 (1970) to vacate a judgment of conviction and concurrent sentences following pleas of guilty to three counts of conspiring to transport stolen securities in foreign commerce, the essential issues are: (1) whether the guilty pleas were accepted in violation of Fed. R. Crim. P. 11;¹ and (2) whether sufficiently substantial issues were raised in the district court to have warranted an evidentiary hearing. For the reasons below, we affirm as to one conspiracy count but remand for recon-

¹ Fed. R. Crim. P. 11 provides:

"A defendant may plead not guilty, guilty or, with the consent of the court, *nolo contendere*. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of *nolo contendere* without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."

sideration of sentence on that count; and we reverse as to the other conspiracy counts and remand for repleading to those counts.

I. FACTS AND PRIOR PROCEEDINGS

Joseph Seiller and others were indicted on June 23, 1971 in the United States District Court for the Southern District of New York in two indictments which charged various offenses of transporting and conspiring to transport stolen securities, largely in foreign commerce.

One indictment (71 Cr. 675) charged Seiller and William Silverman with conspiring to transport stolen securities in foreign commerce in violation of 18 U.S.C. §371 (1970) (Count One), and transporting a stolen \$1,000,000 Treasury bill in violation of 18 U.S.C. §2314 (1970) (Count Two); and it charged Seiller, Silverman, Robert Cohn, Michael Salvaggio and Stephen Salvaggio with a separate conspiracy to transport stolen securities in foreign commerce in violation of 18 U.S.C. §371 (1970) (Count Three).

The second indictment (71 Cr. 676) charged Seiller, Gabriel Infanti and Nathan Kurtz with a third conspiracy to transport stolen securities in foreign commerce in violation of 18 U.S.C. §371 (1970) (Count One), and transporting stolen securities in foreign commerce in violation of 18 U.S.C. §§2314 and 2 (Count Two).

On June 28, 1971, not guilty pleas were entered on behalf of Seiller to each of the five counts in both indictments.

On May 1, 1972, accompanied by his attorney, Seiller appeared before Judge Cooper. The attorney informed the court that Seiller wished to withdraw his pleas of not guilty and to plead guilty, with the government's consent, to the three conspiracy counts, i.e., to Counts One and Three of indictment 71 Cr. 675 and to Count One of indictment 71

Cr. 676.² As Seiller was suffering from vertigo at the time, he was allowed to remain seated during the proceedings.

The court thereupon conducted a detailed, comprehensive voir dire examination of Seiller to determine whether to accept his pleas of guilty. The court ascertained, among other things, that Seiller was 47 years of age and had attended a university. The court emphasized to Seiller the specific consequences of his pleading guilty. The court requested that Seiller listen with care as the clerk read in full each of the three counts to which Seiller wished to plead guilty. After each count was read, the clerk asked Seiller whether he understood the charge as read and how he wished to plead. Seiller responded as to each count that he did understand the charge and that he pleaded guilty.³

² The substantive counts subsequently were dismissed on motion of the government when Seiller was sentenced on March 21, 1973.

³ The following is the relevant portion of the transcript of the reading of each count, of Seiller's acknowledgment of his understanding of each count and of his plea of guilty to each count:

"The Court: It's on you that there will be the criminal fingerprint record and as a result of your plea you may go to jail, not your lawyer and not anyone else in the case.

So I want to be mighty sure you know what you are doing. I want you to listen with great care to the reading of the first indictment, that is 675.

Mr. Clerk, the lower number.

* * * * *

The Clerk: Joseph Seiller, on June 23, 1971, 71 Cr. 675 was filed.

Count 1. The grand jury charges:

1. On or about the first day of September, 1969, and continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York, Joseph Seiller and William Silverman, the defendants, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and with each other and with other persons to the grand jury known and unknown to violate Section 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the said defendants would transport and cause to be transported in interstate and foreign commerce goods, wares, merchandise and securities of the value of

The court then asked Seiller whether he understood that each count constituted a separate crime; whether he understood the maximum terms of imprisonment and fines that could be imposed; and whether he understood that consecutive sentences on each of the three counts could be im-

\$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

Overt Acts. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York.

1. On or about September 29, 1969, defendants Joseph Seiller and William Silverman met at 60 Wall Street, New York, New York.
2. On or about September 29, 1969, defendant Joseph Seiller sent a telex message to London, England.
3. On or about September 29, 1969, the defendant William Silverman traveled through and from the Southern District of New York to Kennedy International Airport, New York, New York.

Mr. Seiller, do you understand the charge I read to you in Count 1.

The Defendant: Yes.

The Clerk: How do you now plead to Count 1?

The Defendant: Guilty.

The Clerk: Count 3.

1. The grand jury further charges.

1. On or about the first day of December, 1970, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, Joseph Seiller, William Silverman, Robert Cohn, Michael Selvaggio and Stephen Salvaggio, the defendants, unlawfully, willfully and knowingly, combined, conspired, confederated and agreed together and with each other and with other persons to the grand jury known and unknown to violate Section 2314 of Title 18 United States Code.

2. It was a part of said conspiracy that the said defendants would transport and cause to be transported in interstate and foreign commerce, goods, wares, merchandise and securities of a value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

Overt acts. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York.

1. On or about December 30, 1970, the defendant Joseph Seiller made a telephone call.
2. On or about January 5, 1971, the defendant Joseph Seiller traveled to the vicinity of 237 Madison Avenue, New York, New York.

posed, so that in effect he was facing a maximum prison sentence of 15 years and a maximum fine of \$30,000 as a result of his guilty pleas. Seiller answered affirmatively to each question.

3. On or about February 7, 1971, defendant William Silverman traveled to the vicinity of 237 Madison Avenue, New York, New York.

4. On or about May 15, 1971, the defendant William Silverman traveled to the vicinity of the Tudor Hotel, 304 East 42nd Street, New York, New York.

5. On or about May 15, 1971, the defendants William Silverman, Robert Cohn, Michael Selvaggio and Stephen Salvaggio traveled to the vicinity of the Commodore Hotel, 304 East 42nd Street, New York, New York.

6. On or about May 15, 1971, in the Commodore Hotel, the defendants Michael Selvaggio and Stephen Salvaggio carried luggage containing approximately \$1,200,000 worth of bonds.

Mr. Seiller, do you understand the charge I read to you in Count 3?

The Defendant: Yes.

The Clerk: How do you now plead to Count 3?

The Defendant: Guilty.

The Clerk: Now, your Honor, this is 71 Cr. 676.

The Court: Please read the conspiracy count of that indictment now to the defendant.

The Clerk: Yes, your Honor.

Mr. Seiller, on June 23, 1971, criminal indictment 71 Cr. 676 was filed.

Count 1. The grand jury charges.

1. From on or about the first day of August, 1969, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, Joseph Seiller, Gabriel Infanti and Nathan Kurtz, the defendants, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and with each other and with other persons to the grand jury known and unknown to violate Section 2314 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants would transport and cause to be transported in interstate and foreign commerce, goods, wares, merchandise and securities of the value of \$5,000 or more knowing the same to have been stolen, converted and taken by fraud.

Overt Acts. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York.

The court further inquired whether Seiller had discussed all of the charges fully with his attorney; whether he had held anything back from his attorney; and whether he had understood everything his attorney had told him concerning his rights.⁴ Although Seiller responded by indicating full disclosure to his attorney and complete understanding of his rights, the court nevertheless explained to Seiller that he had a right to trial by a jury of 12; that at such trial the government would have the burden of proving him guilty beyond a reasonable doubt; that he could refuse to testify or to call witnesses; that the jury would be told that no unfavorable inferences could be drawn from such refusal to testify or to call witnesses; and that he could be convicted only by a unanimous vote of the jury. Seiller stated that he understood each of these rights which he was waiving by his guilty pleas.

1. On or about December 19, 1969, the defendant Joseph Seiller caused a letter to be sent to Weisbaden, Germany.

2. On or about December 24, 1969, the defendant Joseph Seiller caused a letter to be sent to Weisbaden, Germany.

3. On or about December 27, 1969, the defendant Joseph Seiller sent a telex message to Frankfurt, Germany.

4. On December 29, 1969, the defendant Joseph Seiller caused a letter to be sent to Weisbaden, Germany.

Mr. Seiller, did you understand Count 1 that I just read to you?

The Defendant: Yes.

The Clerk: How do you now plead?

The Defendant: Guilty."

4 The following is the relevant portion of the transcript regarding Seiller's discussion of the charges with his attorney:

"The Court: Now, did you, in talking with your attorney, discuss everything pertaining to each one of these three charges in full? Did you?

The Defendant: Yes, sir.

The Court: Did you hold back anything from your attorney relating to these three charges?

The Defendant: No, I had no reason to.

The Court: Did you understand everything that your attorney said to you in regard to your rights in respect of each of these three charges?

The Defendant: Yes, sir."

The court then inquired whether Seiller was pleading guilty of his own free will. At first Seiller attempted to condition his pleas upon the understanding that he would not be deported. The court bluntly informed him that no proviso could be added to his pleas. Seiller thereupon stated that he understood that he was "making a plea of guilty without any conditions of any kind." In response to the court's further inquiry, Seiller stated that in return for his guilty pleas no one had made any threat or promise, including no promise of a more lenient sentence.⁵

Finally, after questioning Seiller as to the factual basis for his pleas,⁶ the court made the following finding in accepting his pleas of guilty:

5 The following is the relevant portion of the transcript regarding the voluntariness of Seiller's pleas:

"The Court: Has anyone threatened you to get you to plead guilty?"

The Defendant: No, sir.

The Court: Has anyone promised you anything of any kind if you would plead guilty?"

The Defendant: No, sir.

The Court: Of course, by that I include a promise that if you plead guilty you will get a more lenient sentence. Has anybody said anything like that to you?"

The Defendant: No, sir.

The Court: It is well recognized that judges, including this Judge, do take into consideration a plea of guilty unless there are extraordinary circumstances that do not warrant a judge doing that, but in the vast majority of instances it has been my practice to allow consideration to a defendant who comes in and says, "This I did, this I admit, this I am not fooling around with and I am not asking for a trial in which to possibly extradict myself. I say I did this and I am not ducking it.

That to me should operate in favor of a defendant. But I am making no promises because I do not know your history, which I will only learn in the time to follow this date from the Probation Department, which is going to make an investigation, and they don't start before there is a plea of guilty.

Do you understand that?"

The Defendant: Yes, sir."

6 The following is the relevant portion of the transcript regarding the factual basis for Seiller's pleas:

"Let the record show that having listened to the defendant, I am content to state for the record that his alacrity of responses and his show of intelligence that he demonstrated was based not only on what he said,

The Court: Is there anything else that occurs to you, Mr. McDermott [Assistant U.S. Attorney], or to counsel for the defense that I should ask this defendant before I close the proceeding?

Mr. McDermott: Yes, your Honor.

With respect to each of the conspiracies, to elicit a brief factual statement as to what the defendant did.

The Court: The defendant seems to be extremely intelligent and the language of the indictment was so basic and so simple that I thought I'd avoid that, but I will go into it nevertheless.

Mr. McDermott: Thank you.

The Court: Will you please tell me briefly what it is that you admit that you did in connection with each one of these three charges.

Now, the reason Mr. McDermott suggest that is that sometimes the defendant doesn't quite understand the language of the indictment and to be absolutely sure that the defendant knows what he's doing and what he's pled guilty to it is a good way to say, 'What are you pleading guilty to? Why? What did you do?'

The man says, 'I stole goods, I robbed a bank. I went in there and told them to give me the money or I'd blow up the bank.'

That is the way he tells what he did.

Now, will you please recite what you did with respect to [each] one of these three charges?

The Defendant: In each one of the three charges I introduced parties to each other which committed then the crimes of which I am accused. That is how I got involved in the conspiracy.

The Court: You are not telling us. You are summing it up. What did you do that makes you guilty? What do you admit that you did? Did you, with knowledge, know that the goods that were being transported were obtained and so forth and so forth. Did you know that?

The Defendant: Not in all three situations.

The Court: Then I wish you would tell me. You had better go ahead. You are an intelligent person. What is it you are pleading guilty to?

The Defendant: To the conspiracy charge because I hold myself responsible that I introduced parties to each other which committed the crimes I am accused of.

The Court: But you knew that they were committing them?

but also on his facial expressions and as a fact finder I am content that this defendant knows the full significance of what he is undertaking to do by taking a plea of guilty to each one of the three conspiracy charges, and accordingly, I direct the Clerk to enter a plea of guilty as to each conspiracy charge contained in 71 Cr. 675 and a plea of guilty to the conspiracy charge set forth in 71 Cr. 676."

Seiller's change of plea proceedings took place before Judge Cooper on May 1, 1972. Later that month, Count One of indictment 71 Cr. 676 (a conspiracy count to which Seiller had pleaded guilty) was dismissed at the close of the government's case during the trial of his co-defendants Infanti and Kurtz (they were both convicted on Count Two). The following month, his co-defendant Silverman was acquitted by a jury on Count Three of indictment 71 Cr. 675 (another conspiracy count to which Seiller had pleaded guilty); and in December 1972, all remaining

The Defendant: Yes, I knew that.

The Court: And the crimes that they committed, what do you mean by that? They did what?

The Defendant: In one case they were trying to sell United States Treasury bills, in another case—

The Court: Knowing they were stolen?

The Defendant: Not known to me but later on found out it was stolen.

The Court: Yes?

The Defendant: And in the other case, partners of mine used me to find a buyer for stolen securities which I didn't know at that time if they were stolen but I was later on informed that they were stolen.

And the third time I introduced Mr. Silverman to Mr. Reeves, who is a witness, I think, for the purpose to make arrangements to sell—to purchase stolen securities.

The Court: What do you say, Mr. McDermott?

Mr. McDermott: That fairly sums it up, your Honor.

The Court: Is the Government satisfied?

Mr. McDermott: Yes, your Honor."

charges in indictment 71 Cr. 675 were dismissed against Seiller's co-defendants Silverman, Cohn, Selvaggio and Salvaggio (including both conspiracy counts to which Seiller had pleaded guilty).⁷

Nettled by his fate as compared to that of his co-defendants, Seiller on January 12, 1973 moved to withdraw his pleas of guilty pursuant to Fed. R. Crim. P. 32(d). In an affidavit in support of his motion, Seiller claimed to be innocent of the crimes to which he had pled guilty; he stated that his "plea of guilty was entered improvidently, while [he was] in a state of debilitating health, which rendered him unable to think properly, having to move on crutches or canes, because of his sickness keeping him in a state of unbalance"; and he inferred that he did not understand the nature of the charges against him when he pleaded guilty because of language difficulties:

"That apparently since I have a language barrier, being versed in the German language, and, although I understand some basic English, there is an area of exchange that has been difficult for me to understand. Consequently, he sought the advice of attorneys who are bilingual and understand German fluently and are capable of expressing the law more clearly to the said deponent, he has been made aware that his acts were

⁷ On May 16, 1972, Infanti and Kurtz were found guilty by a jury on Count Two of indictment 71 Cr. 676. On August 15, 1972, Infanti and Kurtz were each given two year suspended sentences and were each fined \$5,000. Count One was dismissed without opposition after the government had rested its case. On February 27, 1973, we affirmed Infanti's conviction, but reversed Kurtz' conviction for insufficient evidence. *United States v. Infanti*, 474 F.2d 522 (2 Cir. 1973). See 474 F.2d at 524 and 527 for some indication of the significant role of Seiller in this conspiracy.

On June 26, 1972, Silverman was acquitted by a jury on Count Three of indictment 71 Cr. 675. The remaining charges against Silverman, together with those against Selvaggio, Salvaggio and Cohn, were dismissed on December 15, 1972, upon the filing of a *nolle prosequi*.

not those of a guilty person, and should not have taken a plea of guilty."

Seiller further urged in support of his motion that the government had withdrawn indictment 71 Cr. 675 "as against all parties" and that "[i]n indictment No. 71 Cr. 676 the co-defendant therein was found not guilty because there was no conspiracy, therefore, I cannot be said to conspire with myself." Seiller also alleged that "there was no plea bargaining herein."

The government's opposing affidavit challenged Seiller's assertions as vague and conclusory; stated that there was no hint anywhere in the record that Seiller did not comprehend what he was doing when he entered his guilty pleas; and urged that Seiller's motion in truth was not based upon Seiller's ignorance or inability to understand the plea proceedings but upon his hope that the government would be unwilling or unable to prosecute him at that time.

In a memorandum opinion filed January 26, 1973, Judge Cooper denied Seiller's motion. Supplementing the remarks he had made at the close of the change of plea proceedings on May 1, 1972, Judge Cooper added:

"The official court reporter's minutes clearly delineates the unequivocal understanding by movant of each and every step involved in, and the full scope of, the plea-taking procedure. What those same official court minutes do not reveal is the vocal impression imparted by interrogation and response to the words reflected therein and which gave positiveness to the entire proceedings then under way. The defendant at all times was impressively alert, unwavering, distinct and in full control while undertaking to respond to the questions propounded."

The judge stated that Seiller's papers were "quite bare of factual assertion"; found "that which is presented is unimpressive and unconvincing"; and concluded as follows:

"We are compelled to brush aside as baseless and completely without factual support, the assortment of reasons defendant now advances in support of the relief he seeks. Typical of the reasons presented are two—that at the time of the plea he was in a state of debilitating health which rendered him unable to think properly and that a language barrier interfered with full comprehension of the total significance of the proceeding. As to the former, not the slightest indication was discernible of any limitation whatever in respect of his thinking processes. And as to the latter, his answers, although tinged with teutonic inflection (he is a German national), flowed freely, he had no need to search for the proper word, and his pertinent responses pounced upon the questions to which they related. Indeed, defendant was in full command of the situation.

We suspect that the instant application was precipitated by the acquittal received by one of defendant's co-conspirators. In any event, on the merits the plea interposed to each of the three conspiracy counts by this defendant on May 1, 1972 must stand and his instant motion is denied in all respects." (emphasis added).

On March 21, 1973, Seiller was sentenced to concurrent three year terms of imprisonment on each of the three conspiracy counts to which he had pled guilty. The sentence was ordered to run consecutively to a New York State sentence which Seiller was then serving.⁸ By letter dated

⁸ On January 11, 1975, Seiller completed serving his New York sentence and was remanded to federal authorities to commence serving his federal sentence.

April 30, 1973, Seiller asked for reconsideration of his sentence as unduly harsh. Judge Cooper treated this letter as a motion to reduce sentence pursuant to Fed. R. Crim. P. 35 and denied it by an order entered June 15, 1973.

On April 9, 1974, Seiller filed the instant motion to vacate his judgment of conviction and sentence⁹ pursuant to 28 U.S.C. §2255 (1970). In an affidavit in support of the motion, Seiller repeated his protestations of innocence and his previous claims concerning his lack of understanding of English and his poor health at the time of his pleas. Contrary to his earlier assertion that there had been no plea bargaining, he alleged that the United States Attorney's Office had suggested that he "take a 'guilty' plea on conspiracy only" and had told him that "the court would be made aware of [his] cooperation and that [he] could expect leniency." Seiller further alleged that his then attorney, James J. Cally, Esq., had advised him to plead guilty because of his ill health and had told him that the most he could expect would be a suspended sentence.

Maurice M. McDermott, Esq., the Assistant United States Attorney in charge of the case at the time Seiller pled guilty, in an affidavit in opposition to Seiller's motion denied Seiller's allegations with respect to representations by the government that he could expect leniency and that the sentencing court would be made aware of Seiller's cooperation. Mr. McDermott stated that he had met with Seiller to discuss his possible cooperation with the government in the prosecution of Kurtz and Infanti. He further stated that the most he would have told Seiller in accord-

⁹ The government did not challenge the propriety of the §2255 motion on the ground of Seiller's failure to appeal directly from his judgment of conviction. Seiller claimed that no appeal was taken because his counsel informed him that there could be no appeal from pleas of guilty. Since this issue was not raised below nor on appeal, we express no opinion thereon.

ance with his standard practice was that, if Seiller cooperated fully and testified truthfully and candidly, this would be made known to the sentencing judge. Seiller was not called as a witness at the trial of Kurtz and Infanti because Mr. McDermott had concluded after his discussions with Seiller that he would not be a credible witness since he was evasive and consistently attempted to minimize his own criminal involvement in the conspiracies. Seiller's former attorney, Mr. Cally, categorically denied in an affidavit that he ever had told Seiller that he could expect a suspended sentence.

In a reply affidavit Seiller admitted that the portion of the McDermott affidavit on the matter of leniency was accurate. Seiller alleged, however, that Mr. McDermott had told him that the court would be informed about his willingness to cooperate and that he also had told him that leniency could be expected. Seiller asserted that the reason he had not been called as a witness was because he knew too little to be of value to the prosecution. Seiller also admitted the accuracy of the Cally affidavit. He alleged, however, that Mr. Cally had told Seiller's wife in Seiller's presence that he thought Seiller could expect a suspended sentence.

In a memorandum opinion filed June 13, 1974, Judge Cooper denied Seiller's §2255 motion in all respects. After noting that most of Seiller's allegations had been disposed of as baseless and completely without factual support in his earlier opinion denying Seiller's Rule 32(d) motion, Judge Cooper stated:

"In the motion before us now, petitioner alleges certain new grounds: that he was told he could expect leniency from the Court in return for his cooperation with the Government, and that his attorney

told him that the most he could expect at sentence would be a suspended sentence.

These new grounds are forcefully denied in affidavits submitted by the Government and petitioner's attorney. Petitioner's reply thereto is without substance—words that are hollow and consequently unpersuasive."

The judge concluded that Seiller's papers clearly were insufficient to warrant a hearing.

The instant appeal was taken by Seiller from Judge Cooper's order of June 13, 1974 denying his §2255 motion.

II. SEILLER'S UNDERSTANDING OF NATURE OF CHARGES

Rule 11 requires to the extent here relevant that, before a plea of guilty may be accepted, the court must establish by personally questioning the defendant that he understands the nature of the charge. *McCarthy v. United States*, 394 U.S. 459, 464-67 (1969).

Seiller contends that the extent of Judge Cooper's compliance with this requirement was that the three conspiracy counts were read to him and that he was asked how he pleaded to each. He argues that we held in *Irizarry v. United States*, 508 F.2d 960 (2 Cir. 1975), that reading the indictment to a defendant does not satisfy *McCarthy*; that *Irizarry* requires that the court establish that a defendant understands the elements of the crime charged, particularly where the crime is a complex one such as conspiracy; and that here the court did not do so. Instead, so the argument goes, the court considered it unnecessary to explain the elements of knowledge and intent to Seiller, relying instead on the language of the indictment and the court's favorable impression of Seiller's intelligence.

At first blush, Seiller's argument has a certain surface appeal. Upon analysis, however, it does not stand up—as to either his reading of *Irizarry* or his application of that case to the facts of the instant case.

Turning first to *Irizarry*, in reversing the denial of a §2255 motion to vacate a judgment of conviction for conspiring to possess and distribute cocaine entered upon the court's acceptance of a plea of guilty, we held that the court had failed to establish the defendant's understanding of the nature of the charge. Our conclusion that Rule 11 had not been complied with was based on: (1) the court's failure to spell out the charge beyond identifying it as conspiracy; (2) the court's inadequate explanation of the nature of conspiracy; and (3) the total dearth of anything in the record to indicate that Irizarry understood the nature of the offense with which he was charged. 508 F.2d at 964.

Contrary to Seiller's interpretation of *Irizarry*, we did not hold that reading of the indictment may *never* satisfy the requirement that a defendant's understanding of the charge be determined. Our opinion made clear that whether reading the indictment would constitute an adequate determination of a defendant's understanding would depend on the particular circumstances of the case. 508 F.2d at 965 n.4 and 968 n.9. See also *Rizzo v. United States*, 516 F.2d 789, 794 (2 Cir. 1975).

The instant case is a far cry from *Irizarry*. Here, each count to which Seiller sought to enter a plea of guilty was read to him verbatim. Each of the three counts charged that Seiller and his specified co-defendants during a specified period of time had "unlawfully, wilfully and knowingly combined, conspired, confederated and agreed" to violate the substantive provisions of 18 U.S.C. §2384 (1970); that as part of the conspiracy, Seiller and his specified co-defen-

dants would transport or cause to be transported in foreign commerce securities of a value of \$5,000 or more, "knowing the same to have been stolen, converted and taken by fraud"; and that certain specified overt acts—13 in all—were committed in furtherance of the respective conspiracies. Unlike *Irizarry*, the reading of these specific, detailed counts plainly spelled out to Seiller the requisite elements of the crimes with which he was charged: this was done not once, but three times. Unlike *Irizarry* Seiller acknowledged three times that he understood the respective charges. See note 3, *supra*. Unlike *Irizarry*, Judge Cooper established that Seiller had fully discussed each of the three charges with his attorney, that he had not held anything back from his attorney relating to the three charges, and that he understood everything his attorney had told him regarding his rights with respect to each of the three charges. See note 4, *supra*. Moreover, the court carefully explained to Seiller in considerable detail the rights he would be waiving by his pleading guilty, all of which Seiller acknowledged he understood.

We hold that the district court here was amply justified in relying on the reading of the indictment, coupled with Seiller's discussions with his attorney, his age (47), his university education, his representation by counsel, his "alacrity of responses and his show of intelligence"—in short, the court's total impression of the defendant and his understanding of the proceedings—to establish that Seiller understood the nature of the charges. *Irizarry v. United States*, *supra*, 508 F.2d at 964 n. 3; *Paradiso v. United States*, 482 F.2d 409, 414 (3 Cir. 1973); *Eagle Thunder v. United States*, 477 F.2d 1326, 1328 (8 Cir.), *cert. denied*, 414 U.S. 873 (1973).

III. FACTUAL BASIS FOR SEILLER'S PLEA

Rule 11 requires not only that a defendant's understanding of the nature of the charge be established before a plea of guilty may be accepted, but also that the court may satisfy itself that there is a factual basis for the plea. *McCarthy v. United States*, *supra*, 394 U.S. at 467. Moreover, this factual basis must be sufficiently established by the record, rather than by assumptions of fact made by the trial judge which may be open to dispute. *Santobello v. New York*, 404 U.S. 257, 261 (1971); *Irizarry v. United States*, *supra*, 508 F.2d at 967-68.

Seiller claims that the colloquy between Judge Cooper and himself on the factual basis for his pleas, see note 6, *supra*, was insufficient to establish the requisite factual basis for any of the three counts to which he pled guilty. He now seeks to interpret his answers to Judge Cooper's questions as showing that the only act he performed in connection with each conspiracy was the introduction of the parties who later transported stolen securities. Merely introducing the parties, Seiller argues, could not make him a participant in the conspiracy unless he knew of the unlawful purpose of the conspiracy and intended to further its unlawful purpose at the time he introduced the parties. With respect to two of the conspiracies (Count One of each of indictments 71 Cr. 675 and 71 Cr. 676), Seiller contends that his responses indicate that he denied any knowledge of the unlawful purpose of the conspiracies or any intent to further that purpose when he introduced the other conspirators.¹⁰ With respect to the third conspiracy (Count

¹⁰ The following is the portion of the transcript relied upon by Seiller (set forth more fully in note 6, *supra*):

"The Court: And the crimes that they committed, what do you mean by that? They did what?"

Three of indictment 71 Cr. 675), Seiller contends that the record at best is ambiguous as to his knowledge and intent.¹¹

I would hold that Seiller's responses to the reading of each count of the indictments, together with his responses to Judge Cooper's questions, provide a sufficient factual basis for accepting Seiller's pleas to each of the three counts.^{11a}

The Defendant: In one case they were trying to sell United States Treasury bills, in another case—

The Court: Knowing they were stolen?

The Defendant: Not known to me but later on found out it was stolen.

The Court: Yes?

The Defendant: And in the other case, partners of mine used me to find a buyer for stolen securities which I didn't know at the time if they were stolen but I was later on informed that they were stolen."

- 11 Seiller points to the following portion of the transcript, set forth more fully in note 6, *supra*:

"[The Defendant]: And the third time I introduced Mr. Sherman to Mr. Reeves, who is a witness, I think, for the purpose to make arrangements to sell—to purchase stolen securities."

- 11a All three members of this panel agree that there was a sufficient factual basis for accepting Seiller's guilty plea to Count Three of indictment 71 Cr. 675. We therefore affirm the district court's refusal to vacate the judgment of conviction on that count.

With respect to Count One of indictment 71 Cr. 675 and Count One of indictment 71 Cr. 676, for the reasons set forth in Judge Mulligan's opinion, pages 6537-6543, *infra*, my colleague believe that a sufficient factual basis was not established by the record for accepting Seiller's guilty pleas to those counts. The order of the district court therefore is reversed as to those counts and the case is remanded to give Seiller an opportunity to plead to those two counts.

Since concurrent three year terms of imprisonment were imposed on each of the three conspiracy counts to which Seiller pled guilty, the case also is remanded for reconsideration of the sentence on Count Three of indictment 71 Cr. 675. See *United States v. Sperling*, 506 F.2d 1323, 1343 (2 Cir. 1974), *cert. denied*, 420 U.S. 962 (1975). See also *United States v. Rivers*, 521 F.2d 125, 129 (2 Cir. 1975); *United States v. Eliso*, 491 F.2d 1235, 1236 (2 Cir. 1974); *United States v. D. Morco*, 488 F.2d 828, 837 (2 Cir. 1973); *United States v. Mancuso*, 485 F.2d 275, 283 (2 Cir. 1973); *United States v. Mapp*, 476 F.2d

As stated above, the reading of the offenses charged in the indictment, coupled with a defendant's admission that he committed the offenses charged, may provide a sufficient factual basis for a guilty plea where the charge is straightforward and the elements of the crime are clearly set out. *Irizarry v. United States*, *supra*, 508 F.2d at 968 n. 9; *Rizzo v. United States*, *supra*, 516 F.2d at 794. Here, however, in my view there is no need to affirm solely on that ground.

At the government's request, Judge Cooper pursued further his inquiry into the basis for the pleas, even though he believed that the reading of the indictments was sufficient in light of Seiller's intelligence and the clear, detailed language of the indictments.

Seiller told Judge Cooper that he was pleading guilty "[t]o the conspiracy charge because I hold myself responsible that I introduced parties to each other which committed the crimes I am accused of." Judge Cooper then asked, "But you knew that they *were committing* them?" (emphasis added). To this Seiller responded, "Yes, I knew that."

With respect to the third conspiracy (Count Three of indictment 71 Cr. 675), Seiller unequivocally stated, "... I

67, 83 (2 Cir. 1973); *United States v. Hines*, 256 F.2d 561, 564 (2 Cir. 1958). Cf. *United States v. Febre*, 425 F.2d 107, 113 (2 Cir.), *cert. denied*, 400 U.S. 849 (1970). In remanding for reconsideration of the sentence on Count Three, we intimate no view as to the propriety of charging the sentence on that count. See *United States v. Sperling*, *supra*, 506 F.2d at 1343.

In view of Judge Mulligan's citation of *McGee v. United States*, 462 F.2d 243, 247 (2 Cir. 1972), in connection with the remand for reconsideration of sentence on Count Three, I am constrained to state, as I did in my dissenting opinion in *McGee*, that, "To some trial judges, such [remand] might be taken as a nudge to reduce sentence. I do not believe that [the district judge in the instant case] is one to be easily nudged." See opinion of Judge Murphy in *McGee* on remand, 341 F.Supp. 442 (S.D.N.Y. 1972), especially the last sentence of his opinion, *id.* at 445, *affirmed*, 463 F.2d 337 (2 Cir. 1972).

introduced Mr. Silverman to Mr. Reeves . . . for the purpose to make arrangements to sell—to purchase stolen securities." Contrary to Seiller's present contentions, it would be difficult to articulate a less ambiguous or more inculpatory admission of guilty knowledge and intent to commit the crime charged.

With respect to the conspiracy charged in Count One of indictment 71 Cr. 676, it is significant that there were read to Seiller, and he admitted, the overt acts alleged in furtherance of the conspiracy charged—particularly the allegation that he had sent a highly incriminating telex to one of his co-conspirators in Frankfurt, Germany, on September 27, 1969, as well as another incriminating letter to Wiesbaden, Germany, on September 29, 1969.¹² Since the

¹² The September 27 telex and the September 29 letter were described by Judge Oakes in *United States v. Infanti*, 474 F.2d 522 (2 Cir. 1973), which affirmed the conviction of Infanti and reversed that of Kurtz on the substantive charge of transporting stolen securities in foreign commerce:

"A Telex message was sent by co-defendant Joseph Seiller to a Max Sperber, informing him of the arrival on the 29th in Frankfurt at 8:15 a.m. of 'Mr. Gabriel Infanti' on the specific TWA flight. The Telex went on to state that Infanti 'has been instructed to expect to be picked up at the airport by you'; that he would bring with him the four certificates, 'endorsed in blank according to law,' along with a 'corporate resolution showing that the president of the owner's corporation is authorized to sign these certificates'; that Infanti was supposed to receive \$825,000 (U.S.) or '40 per cent of Monday market quotation whichever is higher in cash or bankers draft and fly back.' The Telex was sent under the cable address ORFI-COEAST, an acronym for Organization for International Finance and Commerce or Office International, Inc., a firm of which Seiller was president and the letterhead of which contained a Grand Central Station post office box and a Manhattan telephone number. The cable went on to give instructions on how the proceeds of the sale of blue chip stocks at a 60 per cent discount were to be divided and also warned Sperber not to disclose too much information to Infanti so as to avoid that [sic] he can walk into some office in [Frankfurt] and make a deal without our knowledge." *Id.* at 524.

One of the defendant's own exhibits, a letter from Seiller of ORFICO to one Scholz in Wiesbaden written on September 29 said

incriminating character particularly of the telex was beyond dispute and since Seiller pled guilty to a charge specifically alleging his authorship of the telex, it would have been superfluous for Judge Cooper to have read the contents into the record.¹³

As to this same count, Seiller did state that his partners used him "to find a buyer for stolen securities which I didn't know at that time whether they were stolen but I was later on informed that they were stolen." Judge Cooper had ample justification for interpreting this to mean that Seiller learned that the securities were stolen sometime after he was asked to find a buyer but *before* termination of his participation in the transportation of the

in part, "Today you should be busy with the clients of our member being in Frankfurt to sell their shares and you should be able to collect the various amounts of money which we have given instructions to Mr. Sperber to pay." *Id.* at 525.

Further references to co-defendant Seiller in our *Infanti* opinion are noted—not to supplement the record before Judge Cooper, but to indicate the extent of Seiller's involvement:

"The jury may be taken to have inferred that *Infanti*, acting as Seiller's agent, was to transfer \$2 million in certificates of two major listed companies and receive in return less than 40 per cent of their value." *Id.* at 525.

* * * * *

We may infer, however, that Seiller's office was in Manhattan from his letterhead containing a Grand Central Station box number and a Manhattan telephone number, and that the certificates were at some time in his possession there, since Seiller made the arrangements under which the securities were to be delivered. Furthermore, Seiller described the securities in a letter to Scholz on September 24 as being 'on hand', additional evidence for the inference they were at one time located in his Manhattan office." *Id.* at 527.

13 While the facts upon which the plea is based must appear in the record, this record requirement does not necessitate that a document such as the telex which is unambiguously referred to in the crucial admission should itself be put in the record. The situation would be different of course if the substance of the telex were in dispute.

securities.¹⁴ As stated above, Seiller fully understood the charges against him, including the requirements of knowledge and intent. Judge Cooper's line of questioning was such as to make it abundantly clear to Seiller that the court was attempting to determine whether Seiller knew the securities were stolen before his participation terminated. In this context, and especially with an attorney at his side, Seiller's voluntary admission—"but I was later on informed that they were stolen"—justifiably was taken as an admission that he was informed while he was still participating in the conspiracy.

In short, with respect to Count One of indictment 71 Cr. 676, I would find a sufficient factual basis for the plea in: (1) Seiller's admission of guilt to the charge which alleged specifically that he had sent the September 27 telex and the September 29 letter; and (2) Seiller's initial, unequivocal admission that he knew his co-conspirators "were committing" crimes.

Upon similar reasoning, I would find a sufficient factual basis for the plea to Count One of indictment 71 Cr. 675. When asked about his knowledge that the Treasury bills had been stolen, Seiler responded, "Not known to me but later on found out it was stolen." Again, this response must be considered in light of Seiller's admission of guilt to the straightforward charge which alleged specific overt acts committed by him. This response also must be considered in light of Seiller's unequivocal admission during the earlier colloquy that he knew the others "were committing" the crimes—crimes which were taking place while he was still participating in the conspiracy.¹⁵ For these

14 This would assume that if Seiller had not known that the securities were stolen until after his role in their transportation was complete, he could not have been considered a co-conspirator.

15 In this connection it should be noted that Seiller's argument that his responses to the court's questions regarding each of the first

reasons, I would hold that the record of the change of plea proceedings, read as a whole and in context, established an adequate factual basis for Seiller's pleas of guilty to each of the three conspiracy counts.¹⁶

counts of indictments 71 Cr. 675 and 71 Cr. 676 indicate that he did not have knowledge that the securities were stolen when he made the introductions ignores his earlier admission that he knew the parties were committing the crimes when he introduced them. The relevant portion of the transcript reads:

"The Defendant: . . . I hold myself responsible that I introduced parties to each other which committed the crimes I am accused of.

The Court: But you knew that they were committing them?

The Defendant: Yes, I knew that."

Even accepting Seiller's argument, however, it does not follow that his presently asserted claim of lack of knowledge exonerates him of the crime of conspiracy. Both of these counts charged conspiracies continuing up to the date of the filing of the indictments. After hearing them read in full, he pleaded guilty to each. Seiller points to nothing in the record of the plea proceedings which indicates that his knowledge that crimes were being committed was not obtained during the life of the conspiracy, *United States v. Badalamente*, 597 F.2d 12, 20 (2 Cir. 1974), *cert. denied*, 421 U.S. 911 (1975), and before he withdrew from the conspiracy by an affirmative act, if he ever did so. *United States v. Borelli*, 336 F.2d 376, 388 (2 Cir. 1964), *cert. denied*, 379 U.S. 960 (1965). In *Badalamente*, we held in relevant part that:

" . . . Badalamente was prosecuted for a conspiracy, and the continuing character of the conspiracy offense obviates the need to have the guilty knowledge contemporaneously with some other event so long as that knowledge is obtained during the life of the conspiracy." 597 F.2d at 20.

In view of the independent grounds stated above for finding a factual basis for the pleas, it is not necessary to rely on this alternative ground. I would hold simply that Seiller's responses to the court's questions, coupled with the reading of the indictment, provided an adequate factual basis for his pleas of guilty to each of the first counts of indictments 71 Cr. 675 and 71 Cr. 676.

¹⁶ Seiller also contends that his responses to the court's questions provide "irrefutable evidence" that he did not understand that knowledge of the unlawful purpose of the conspiracy and intent to further that purpose were requisite elements of the crimes of conspiracy to which he pleaded guilty. In other words, Seiller argues that he pleaded

IV. NO NECESSITY FOR HEARING

Finally, Seiller urges, even if the record of the change of plea proceedings does not establish that the district court failed to comply with Rule 11 in accepting Seiller's pleas of guilty, that we should remand the case for a hearing on his various allegations of innocence, leniency, promises, ill health and language difficulties at the time of his change of pleas. We disagree.

Seiller's argument that his protestations of innocence, coupled with his present version of the facts, necessitate a hearing ignores the limited purpose of the §2255 proceeding which he initiated. Where the invalidity of a plea of guilty is asserted in a §2255 proceeding, the court's duty is to examine the record of the plea proceedings to determine if the judge who accepted the plea of guilty complied with Rule 11, i.e. whether *that record* demonstrates that the defendant's plea was made voluntarily with an understanding of the nature of the charge and that there was a factual basis for the plea. If a court were required in a §2255 proceeding to explore a defendant's new version of the facts, the proceeding would amount to little less than the trial which the defendant waived by

guilty because he thought he was criminally liable for merely introducing people who eventually committed the crimes. I disagree.

This argument might be plausible if the change of plea proceedings consisted solely of Seiller's responses to the court's questions as to the factual basis for his change of pleas. But that is not the case here. Seiller's responses must be viewed in the context of the proceedings as a whole. As we have pointed out, pp. 6511-6515, 6525-6526, *supra*, those proceedings included the reading in, full of the relatively simple charges, Seiller's admissions that he understood the charges, and his separate pleas of guilty to each charge. Moreover, Seiller admitted that he had discussed the charges and his rights fully with his attorney. Finally, there is an on-the-record statement by Judge Cooper that he was convinced at the time of the change of pleas by his observation of Seiller during the proceedings that the latter knew "the full signif-

pleading guilty. The court's inquiry in a §2255 proceeding properly is limited to what was before the judge at the time he was asked to accept the guilty plea. *United States v. Navedo*, 516 F.2d 293, 297 (2 Cir. 1975).

The foregoing applies to Seiller's claims of innocence based on his presently asserted new version of the facts. It does not apply to his allegations of promises of leniency, ill health and language difficulties. As to the latter, Seiller assumes that his mere allegations entitled him to a hearing. We disagree. No hearing was required unless evidentiary facts were alleged in such detail as to have raised sufficiently substantial issues to warrant a hearing. *Michel v. United States*, 507 F.2d 461, 464 (2 Cir. 1974). Mere conclusory assertions do not entitle a petitioner to a hearing. *Dalli v. United States*, 491 F.2d 758, 760 (2 Cir. 1974).

With respect to Seiller's assertions that his ill health and language difficulties prevented him from comprehending the change of plea proceedings, we find his affidavits to be devoid of any evidentiary support for such assertions. They rest solely on Seiller's conclusory statements. Despite his claim that he was under the care of a neurologist and psychiatrist at the time of his change of pleas, it is significant that Seiller failed to submit any affidavit or certificate whatsoever from those persons as to his mental condition at the time of his change of pleas. We hold that the district court was fully justified, when it rejected Seiller's original Rule 32(d) motion and his subsequent §2255 petition, to have relied on its own observation as stated on the record of the change of plea proceedings regarding Seiller's condition at that time. See pages 6516

licance of what he is undertaking to do by taking a plea of guilty to each one of the three conspiracy charges. . . ."

On the record of the change of plea proceedings as a whole, I am satisfied that Seiller fully understood the nature of the crimes to which he pleaded guilty.

and 6519-6521, *supra*. Clearly, within the meaning of §2255, Seiller was entitled to no relief on those claims.

Nor was Seiller's claim that he had been promised leniency by the prosecutor sufficient to warrant a hearing. First, the claim as stated was evasive. Seiller's affidavit in support of his §2255 petition alleged that he had been told that he could expect leniency for his *cooperation*. When the prosecutor specifically denied that Seiller had cooperated with the government, Seiller withdrew to a position that he had been promised leniency for his *willingness* to cooperate. Second, the claim was asserted only belatedly. Seiller did not mention it in his affidavit in support of his Rule 32(d) motion, which in fact stated that there had been no plea bargaining. It is reasonable to assume that if there had been such a promise it would have been called to the judge's attention at the time of sentencing when the government failed to mention it, or in Seiller's letter to the judge requesting reconsideration of his sentence. Finally, of chief importance, Seiller's claim is squarely contradicted by his own statement at the change of plea proceedings that no one had promised him anything of any kind to plead guilty, including a promise of a more lenient sentence. See note 5, *supra*. On this record, we agree with the district court that Seiller's claims are "hollow" and "unpersuasive". See p. 6524, *supra*. They were properly rejected without a hearing. See *Dalli v. United States*, *supra*, 491 F.2d at 762.¹⁷

Finally, Seiller's claim that his change of pleas was induced by his attorney's statement that he thought Seiller could expect a suspended sentence did not entitle him to

¹⁷ Although the government did not oppose an evidentiary hearing on Seiller's claim of promised leniency, that did not divest the district court of its discretion to determine whether the claim was sufficiently substantial to warrant granting a hearing. *Williams v. United States*, 503 F.2d 995, 998 (2 Cir. 1974).

a hearing. Even assuming such statement were true, it would not constitute grounds for vacating the pleas. A mistaken estimate by defense counsel of the sentence Seiller could expect to receive would not vitiate his pleas of guilty. *United States ex rel. Hill v. Ternullo*, 510 F.2d 844, 847 (2 Cir. 1975); *United States ex rel. Scott v. Mancusi*, 429 F.2d 104, 108 (2 Cir. 1970), *cert. denied*, 402 U.S. 909 (1971).

The order of the district court which denied Seiller's motion to vacate the judgment of conviction on Count Three of indictment 71 Cr. 675 is affirmed. With respect to Count One of indictment 71 Cr. 675 and Count One of 71 Cr. 676, the order of the district court is reversed and the case as to those two counts is remanded to give Seiller an opportunity to replead. The case also is remanded for reconsideration of the sentence on Count Three of indictment 71 Cr. 675.

Affirmed in part, reversed in part, and remanded.

MULLIGAN, *Circuit Judge* (dissenting in part and concurring in part):

I dissent from that part of Judge Timbers' opinion which holds that the requirements of Rule 11 of the Federal Rules of Criminal Procedure were met here with respect to Count One of indictment 71 Cr. 675 and Count One of indictment 71 Cr. 676, each of which involved a conspiracy to sell stolen securities in interstate and foreign commerce in violation of 18 U.S.C. § 2314. I would, therefore, to that extent, reverse the order of the district court and give the appellant the opportunity to replead to these counts. I agree with Judge Timbers that there was no violation of Rule 11 with respect to the guilty plea to Count Three of indictment 71 Cr. 675 which charged a different conspiracy to violate section 2314. Since the court

below sentenced the appellant to concurrent three-year terms on each of the three counts, I would remand to the district court for resentencing on Count Three in light of the invalidity of the other two pleas. See *United States v. Rivera*, slip op. 4769, 4775 (2d Cir. July 14, 1975); *McGee v. United States*, 462 F.2d 243, 247 (2d Cir. 1972).

The clear purport of Rule 11 is that the sentencing judge must determine that the conduct which the defendant admits on his questioning constitutes the offense charged in the indictment. *McCarthy v. United States*, 394 U.S. 459, 467 (1969). The record before us persuades me that Seiller's responses to Judge Cooper's questioning in the judge's effort to establish a factual basis for the guilty pleas to the two counts in question demonstrate a denial of criminal intent and therefore a tacit assertion of innocence rather than guilt. The conduct Seiller admitted to was without criminal intent and his admission of guilt therefore only indicates his misunderstanding of the crime charged.

I call attention to the full text of footnote 6 of Judge Timbers' opinion, which is that portion of the transcript of the plea proceeding relating to Judge Cooper's questioning of Seiller in an effort to establish a factual basis for his plea of guilty to the two conspiracy counts at issue. After having the clerk read in full each of the indictments and after Seiller admitted that he was guilty of each crime, Judge Cooper, despite his initial reaction that the defendant was intelligent, that the language of the indictment was simple and basic and that consequently he might avoid inquiry into the factual basis element of Rule 11, nonetheless, and properly in my view, asked Seiller to recite what he did with respect to each charge. Seiller's response was that, in each of the cases, "I introduced parties to each other which committed then the crime of which I am accused. That is how I got involved in the

conspiracy." This would probably suffice to establish the "togetherness" element of the conspiracy, that is to say, the confederation, the mutual participation in a joint venture. However, it did not provide any basis for establishing the specific criminal intent requisite for the crime—the intent to sell securities which were stolen. Judge Cooper very properly continued to press on to determine Seiller's knowledge as to how the securities were obtained. His response was that he did not know "in all three situations." Although Seiller did state that he knew his confederates were committing crimes, Judge Cooper asked if he knew the securities were stolen. With respect to both the United States Treasury bills and the securities which are the subject of the two indictments in question, Seiller specifically stated that he did *not* know they were stolen at the time he introduced the parties but only learned of their theft later on. The judge then said to Government counsel: "What do you say?" His response was, "That fairly sums it up, your Honor." Inexplicably, the voir dire was terminated.

I agree with Judge Timbers that the trial judge's questioning up to this point was comprehensive and searching. It established, to me at least, from Seiller's responses that he considered that his introduction of those who were selling securities not then known to him to be stolen made him a member of a conspiracy to violate 18 U.S.C. § 2314. If that was his understanding, then the plea of guilty should have been rejected. At least at that juncture further questioning on the point was clearly in order.

Judge Timbers' opinion, of course, is not insensitive to the appellant's argument. In part, the opinion suggests that this case is distinguishable from our holding in *Iriary v. United States*, 508 F.2d 960 (2d Cir. 1974), since the indictment here, which charged not only the combination but spelled out the element of intent, was fully read

to the defendant. However, as the Assistant United States Attorney pointed out below, the court still had to assure itself of the factual basis for the admissions. It was at this point that Seiller's specific responses negated the specific intent to dispose of *stolen* securities. I agree that not all conspiracies are that complicated and that in some cases the reading of the indictment, including the overt acts charged, and the admission by the defendant of the acts described therein might well constitute a compliance with Rule 11. *Rizzo v. United States*, 516 F.2d 789, 794 (2d Cir. 1975); *Irizarry v. United States*, *supra*, 508 F.2d at 968 n.9. However, this precise question is not before us because Judge Cooper continued the inquiry and elicited specific denials of guilty knowledge by Seiller which speak louder to me than his predictable monosyllabic admissions of understanding and guilt.

Judge Timbers' opinion also suggests that Seiller's denial of knowledge that the securities were stolen contradicts his earlier admission (see footnote 15 of Judge Timbers' opinion) that he knew that the parties with whom he acted were committing crimes. However, this answer did not satisfy Judge Cooper because he persisted in his examination and, as the transcript indicates (see footnote 6 of Judge Timbers' opinion), Seiller then denied any criminal intent. In view of these specific responses and the failure of the court to further probe into the matter, I see no alternative but to accept Seiller at his word on the record before us.

Finally, Judge Timbers argues that the conspiracies charged were continuing and did not terminate until the date the indictments were filed. He further argues that Seiller points to nothing in the record of the plea proceeding which indicates that his knowledge was not obtained during the life of the conspiracy, citing *United States v. Badalamente*, 507 F.2d 12, 20 (2d Cir. 1974),

cert. denied, 95 S. Ct. 1565 (1975). This argument is unpersuasive in my view. As the Supreme Court announced in *Santobello v. New York*, 404 U.S. 257, 261 (1971):

Fed. Rule Crim. Proc. 11, governing pleas in federal courts, now makes clear that the sentencing judge must develop, *on the record*, the factual basis for the plea, as, for example, by having the accused describe the conduct that gave rise to the charge.

(Emphasis in original; footnote omitted). See also *McCarthy v. United States*, *supra*, 394 U.S. at 470; *Irizarry v. United States*, *supra*, 508 F.2d at 967-68.* The failure of the record here to establish that Seiller had the requisite guilty knowledge prior to the termination of the conspiracy therefore fatally flaws the plea of guilty. The obligation to establish this basic element of specific intent was upon the trial judge and we cannot now rely upon speculation or cast the burden upon Seiller of proving that his guilty knowledge was only obtained sometime after the indictment was filed. Having admitted that he later learned that the securities in issue were stolen, it was the obligation of the court to ascertain the time of the origin of this knowledge and the nexus between that knowledge and Seiller's then-role in the conspiracy.

Aside from this, I would emphasize that Seiller's only admission of personal activity in the criminal enterprise

* In view of this authority, I believe it is inappropriate to supplement the record by reference to *United States v. Infanti*, 474 F.2d 522 (2d Cir. 1973), either to determine Seiller's significant role in the conspiracy (see footnote 7 of Judge Timbers' opinion) or his sophistication and intelligence (see footnote 12 of Judge Timbers' opinion). See *Irizarry v. United States*, *supra*, 508 F.2d at 967-68 (holding that the district judge may rely upon any facts at his disposal, not just the admissions of the defendant, in evaluating the existence of a factual basis for the plea, but that any additional material relied upon must be made a part of the record of the plea proceedings).

was the introduction of his partners to the prospective purchasers. There is nothing in the record to establish any further activity by him and he said that he did not know at that time that the subjects of the sale were stolen. It is further noteworthy that, although the indictment charges a continuing conspiracy, the only overt acts charged in Count One of indictment 71 Cr. 675 which mention Seiller are a meeting and the sending of a telex, both on one day, September 29, 1969. In Count One of indictment 71 Cr. 676, Seiller's overt acts are the sending of letters on the 19th, 24th and 29th of December, 1969, plus a telex on December 27, 1969. In sum, as far as the record before us discloses, Seiller's only participation was limited to arranging introductions over a very brief period of time late in 1969, with nothing to indicate any further factual participation by him in 1970 and 1971. Hence, even if we were permitted to speculate, the exercise is unproductive.

Judge Timbers' reliance on *Badalamente* is misplaced. That was not a Rule 11 case and the conviction there after a full jury trial was, we found, supported by a record which established the defendant's continuing participation, particularly his presence and comments at a significant meeting, which amply justified the jury's determination that he had the unlawful intent required. It is basic, of course, that the participation of a conspirator from the inception of the conspiracy to the termination date charged in the indictment is unnecessary to a conviction of that conspirator. See *United States v. Torres*, 503 F.2d 1120, 1124 n.2 (2d Cir. 1974); *United States v. Flaxman*, 495 F.2d 344, 347 (7th Cir.), cert. denied, 419 U.S. 1031 (1974); *United States v. Stephens*, 492 F.2d 1367, 1373 (6th Cir.), cert. denied, 419 U.S. 874 (1974); *United States v. Dardi*, 330 F.2d 316, 329 (2d Cir.), cert. denied, 379 U.S. 845 (1964). The question rather is what role did a particular

defendant play in the overall venture and, when he did play that role, did he know the purpose of, and did he share in, the specific criminal venture of his playmates. Here the record of Seiller's admissions, which is all that we can look at, discloses that he brought seller and purchaser together, but he said he did not know when he did so that the transaction was meretricious. In view of the apparent satisfaction of the trial judge and counsel for the Government with Seiller's responses and the absence of any further exploration of this matter, I would vote to reverse the denial of the motion under 28 U.S.C. § 2255 to vacate the judgment of convictions upon two counts and remand for resentencing on the third.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

DR. JOSEPH SEILLER,

Defendant.

71 Cr. 675 IBC

SENTENCING MEMORANDUM
ON BEHALF OF
DR. JOSEPH SEILLER

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MICHAEL YOUNG,

Of Counsel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

DR. JOSEPH SEILLER,

Defendant.

71 Cr. 675 IBC

SENTENCING MEMORANDUM
ON BEHALF OF
DR. JOSEPH SEILLER

On June 16, 1976, Dr. Joseph Seiller, the defendant in the above-captioned proceeding, will appear before Your Honor for re-sentencing. Dr. Seiller has already served one and one-half years of the three-year sentence originally imposed in this case. For the reasons set forth below, we will ask the Court to impose a sentence of time served.

Prior to commencement of his Federal sentence, Dr. Seiller served two years of a State sentence imposed for charges related to those in the present proceeding. During the entire period of his State incarceration, Dr. Seiller was ineligible

for normal furlough consideration because of his pending Federal detainer. On January 21, 1975, Dr. Seiller commenced service of his Federal sentence. Thus, he has now spent three and one-half years in uninterrupted incarceration.

This lengthy incarceration has been rendered more onerous by Dr. Seiller's medical problems. As confirmed by the medical records from the Medical Center for Federal Prisoners at Springfield, Missouri, attached hereto as Exhibit A, Dr. Seiller has for the past four years been suffering from a condition tentatively diagnosed as a recurrent "vascular spasm" (*id.* at 9), which has produced vertigo, loss of equilibrium, nausea, and occasional vomiting (*id.* at 2). As a result of this condition, Dr. Seiller cannot move about without the use of two canes or a wheelchair. This medical condition was sufficiently serious to require that Dr. Seiller be confined during service of his State sentence at the Handicapped Unit of the Fishkill Correctional Facility, Fishkill, New York. Similarly, he has been confined during service of most of his Federal sentence in the hospital unit at the Federal House of Detention for Men in New York City, and then at the Medical Center for Federal Prisoners in Springfield, Missouri. These medical problems and their accompanying pain and discomfort have rendered incarceration for Dr. Seiller more punitive than it would be for the normal prisoner.

The Court should also be apprised in making its determination as to the appropriate sentence in this case that even

if the Court does sentence Dr. Seiller to time served, he will not be released from custody. The Immigration and Naturalization Service has lodged a detainer against Dr. Seiller for the purpose of instituting deportation proceedings once he has completed service of his Federal sentence. Thus, if Dr. Seiller is sentenced to time served, he will not be released from custody, but will merely be transferred to the custody of the INS where he will, in all likelihood, be incarcerated several more weeks or months until he is deported.

I have been advised by the Probation Department that the update of Dr. Seiller's presentence report will confirm that his wife has instituted divorce proceedings against him on the grounds of his incarceration.* Thus, in addition to prolonged incarceration while suffering from a deteriorating medical condition, Dr. Seiller will, in all likelihood, be further punished by deportation from this country and the loss of his wife and daughter. It is respectfully submitted that in light of these factors, Dr. Seiller has already been sufficiently punished for the crime for which he is being sentenced.

Finally, the Court, in determining the appropriate sentence, should consider the many positive factors in Dr. Seiller's past and present. The presentence report should confirm

*I have been advised by Mrs. Seiller that although she is seeking a divorce from Dr. Seiller, she continues to be supportive of her husband. If Dr. Seiller were eventually released from custody and allowed to remain in the United States, he would be welcome to reside at their home.

that Dr. Seiller worked for many years in various capacities for the United States Government. He has been awarded membership in the Knights of Malta. Moreover, the many letters submitted to the Court at the time of the original sentencing attest to Dr. Seiller's many positive attributes and accomplishments.

Dr. Seiller's record while incarcerated has been exemplary. As the attached letters from senior officers Albert W. Weir and Victor Cruz at the New York Metropolitan Correctional Center (Exhibits B and D) and the inmate liaison committee (Exhibit C) confirm, Dr. Seiller has repeatedly used his medical training to be of assistance to his fellow inmates. These letters describe Dr. Seiller's recent role in saving the life of a fellow inmate. Thus, senior officer Weir's letter states:

Let me take this opportunity, to thank Doctor Seiller for his assistance in saving the life of inmate Ciro R. Riccardi #22792-175.

It is a matter of record that on April 21st, 1976, while I had just completed my 6:30 A.M. to 3:00 P.M. tour, and had gone off duty, when I was summoned back to the 11th floor, north at 3:20 P.M. During this time, inmate Riccardi had hanged himself from the top of his quarters door. Inmates Victory and Capra are credited with cutting him down, however, it is my understanding that Riccardi was already clinically dead. Doctor Joseph Seiller was already working on Riccardi, when several other staff members and I arrived. In my opinion (as well as Doctor Goldstein, the MCC psychiatrist) that Doctor Seiller is responsible for saving the life of this man.

Having had the opportunity to know this man as I do, I feel it was more than just the ethical code of the medical Hippocratic Oath,

which made him perform as he did. I feel it was more of his basic intellect and general helpful personality, which he uses to apply to help myself, as well as other officers and inmates on a daily basis.

(Exhibit D).

It is respectfully submitted that such actions by Dr. Seiller are factors seriously to be weighed in mitigation of the crime for which he is to be sentenced. Moreover, as previously explained, Dr. Seiller has already suffered severe punishment as a result of his original sentence on this charge.

CONCLUSION

For the above-stated reasons, we respectfully request the Court to impose a sentence of time served at Dr. Seiller's upcoming sentencing proceeding.

Respectfully submitted,

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MICHAEL YOUNG,
Of Counsel.

June 15, 1976

UNITED STATES GOVERNMENT

Memorandum

TO : WHOM IT MAY CONCERN

DATE: June 14th, 1976

FROM : Victor Cruz, S.O. - NYC - MCC

SUBJECT: DR JOSEPH SEILLER, 82675-158, 11 North, B 1112

It is not usual that we give references to one of our residents, however there are exceptions.

On April 21st, 1976, while I was on the 3 to 11 PM shift, at about 3.02 PM, Ciro Riccardi # 22792-175 hanged himself in his room. John Capra and Albert Victory succeeded to break into his room and get him down and out on the floor, but he appeared to have ceased to breath and have heartbeat. They received a departmental commendation for their commendable initiative and action.

Doctor Seiller is an invalid and walks on his two canes, he is not supposed to exert himself. As he realized what was happening, he disregarded his own condition and worked on Riccardi until he was able to revive him before anyone could have come to his aid. I recommended Doctor Seiller several times for a commendation and reward. I did not find anything in his records which could be detrimental to giving it to him.

I want to express my own thanks and appreciation for an act of humanity which saved a life.

Doctor Seiller is well liked here, his intelligence and personality draw attention to this quiet and friendly man. I think he deserves recognition and I feel the least I can do is to give it to him. If any other information should be needed, I will make them available on request, but I hope that this statement will receive some consideration on its own.



5010-110

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UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR FEDERAL PRISONERS
SPRINGFIELD, MISSOURI 65802

April 26, 1976

Michael Young
Associate Appellate Counsel
The Legal Aid Society
Criminal Appeals Bureau
Federal Defender Services Unit
U. S. Court house, Foley Square, Room 509
New York, New York 10007

Your reference: _____

SEILER, Joseph

Our reference: _____

Register #82675-158

THE REQUEST TO FURNISH YOU INFORMATION CONCERNING THE ABOVE PATIENT HAS BEEN RECEIVED. THE FOLLOWING CHECKED ITEM IS APPLICABLE TO THIS REQUEST

_____ The above-captioned former patient and all records were transferred to:

_____ We are forwarding your request and you should hear from them soon.

_____ The records of this former patient have been sent to storage; we will answer your request as soon as the records are returned to us, however, there will a slight delay in our reply because of the time involved in acquiring the record from storage.

_____ We are unable to identify this individual. If you can furnish additional information such as birthdate, date of admission and/or date of discharge as well as verification of spelling of name, we will be glad to make another search.

_____ Medical information is confidential by law and may be released only upon written consent of the patient or former patient. If you will forward a signed consent form, authorization the release, we shall comply with your request.

_____ Bureau of Prisons Regulations prevent our forwarding medical records directly to you. Please have your doctor request the necessary information and enclose your signed authorization for the release of the information.

_____ We cannot release information directly to you. Please have your attorney request the information needed, stating how the information is to be used and enclose your signed authorization. We will then be able to process the request through our regional legal counsel.

XX

_____ The information is enclosed as requested. Its confidentiality must be protected.
Enclosures: History & Physical dated 6-5-75, Consultations 7-23-75, 7-9-75,
Brain Scan, x-ray, Physical Therapy reports, EKG.

_____ Other:

O. Belle Cox
Mrs. O. Belle Cox, A.R.T., Medical Record Administrator
MEDICAL CENTER FOR FEDERAL PRISONERS

BEST COPY AVAILABLE

CLINICAL RECORD

HISTORY--Part I

NATURE AND DURATION OF COMPLAINTS (Include circumstance of admission)

HISTORY OF PRESENT ILLNESSES

CHIEF COMPLAINT: Loss of equilibrium of 4 years duration.

This 50 year old man gives a history of 4 years ago having the sudden abrupt onset of vertigo and loss of equilibrium. This was accompanied by nausea and rarely vomiting. He was unable to walk without assistance and for about a year was confined to a wheelchair. In January and April, 1971, he was evaluated at Columbia Presbyterian Hospital. They apparently were unable to make a diagnosis, feeling that they had ruled out Meniere's syndrome as well as any possibility of a brain tumor. He was evaluated from a psychiatric standpoint and states that he spent about 9 months going to a psychiatrist. The patient was in a wheelchair during 1971, but by 1972, was able to walk with two canes. In 1973, he was incarcerated at the Handicap Unit at the Rikers Island Correctional Facility, Rikers Island, New York. He remained there until May 20. On that date the patient was found comatose and was transferred to Bellevue Hospital in New York City. When he arrived at the hospital there was evidence of left upper extremity plegia and evidence of brain stem dysfunction with labored respiration. The studies that were done there included a lumbar puncture which was reported as being entirely normal and 3 vessel cerebral angiography which was also completely normal, showing no evidence of a mass lesion or ventricular enlargement. The patient also had an EKG and chest film and initial blood studies which were negative. After these studies were completed the patient began to improve and over a 12 hour period returned to normal. A letter from Bellevue Hospital indicates that a urine test was positive for toxic levels of Dilantin, but their blood studies for toxicology were still pending at the time he left the institution. The patient was then sent to Danbury and transferred from Danbury to the Medical Center for further evaluation.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (Type or write on this sheet Name, Date, Age, Address, Place, City, Hospital or medical facility)

NAME, John A.

REGISTER NO.

67-107

WARD NO.

HISTORY--Part I

Standard Form 504
301-130

CLINICAL RECORD

HISTORY--Part 2

PART HISTORY

INSTRUCTIONS.—Include (1) OCCUPATION (Civilian and military), (2) MILITARY HISTORY (Include Geographic locations and dates), (3) HABITS (Alcohol, tobacco, and drugs), (4) FAMILY HISTORY, (5) CHILDHOOD ILLNESSES, (6) ADULT ILLNESSES, (7) OPERATIONS, (8) INJURIES, and (9) DRUG SENSITIVITIES AND ALLERGIC REACTIONS.

Three years ago the patient had a tooth extracted and states he had a cardiac arrest at that time and was hospitalized for 3 weeks with no evidence of further heart disease or injury. He had had prior to that a cardiac arrest during a hernia operation, this was the repair of a right inguinal hernia. He also states that high blood pressure was discovered about 2 years ago but he has had no regular treatment for this. Patient has had no other major medical illnesses.

He had a tonsillectomy and appendectomy as a child. He had a superficial malignancy removed from the area of the right hip a year and one-half ago. The patient states this originated at the site of an embedded metallic fragment from an injury in World War II. The patient in World War II had shrapnel injuries to the right elbow, there was no bone fracture but the ligaments and nerves were damaged. He also had a fragment of metal embedded in the frontal area in the bone but no intracranial injury. There was a superficial injury to the left lower leg in World War II.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For type or written entries give Name, Last, First, Middle, Grade, Date, Branch and Medical File No.)

SMITH, Joseph

REGISTERED NO.

WARD NO.

HISTORY (Part 2 of 2)
Standard Form 505

HISTORY—Part 3

SYSTEM REVIEW

INSTRUCTIONS--Include (1) GENERAL, (2) HEAD (including (3) EYE, (4) EAR, (5) NOSE and (6) THROAT), (7) NECK, (8) RESPIRATORY, (9) CARDIOVASCULAR, (10) GASTROINTESTINAL, (11) GENITO-URINARY (and (12) GYNECOLOGICAL), (13) HEMOPOIETIC, (14) LYMPHATIC, (15) MUSCULO-SKELETAL and (16) NEURO-PSYCHIATRIC SYSTEMS.

Patient complains of recurrent severe frontal headaches which he believes are tension headaches. He wears glasses with satisfactory vision resulting. He states that he had bilateral injury to the eardrums from explosions in World War II with small perforations resulting and some loss of hearing. He has had no nasal obstruction or disease except for an occasional nose bleed. The patient has had all of his teeth extracted and does have full dentures. He denies chronic cough or hemoptysis; he has had no unusual shortness of breath and no chest discomfort on exertion. He does complain of easy tiring, however. He has had no chronic digestive symptoms. He has had no change in bowel habits but does states the day prior to coming to the Medical Center he had a hard stool followed by some bright red bleeding. He has had no difficulty in voiding. He does not complain of joint pain or swelling. However, he states he has had a great deal of discomfort in the right posterior shoulder since his episode of drug overdose. The patient states he was "poisoned" and has no idea how the Elavil was received. The patient is allergic Chloral Hydrate, codeine and Penicillin.

SOCIAL HISTORY: Patient states that he received medical education at the University of Heidelberg in Germany. He said that he was a pathologist but had no internship because of the war. He has worked in the past as an "economist." The patient states he has not used alcohol excessively. Denies drug use and smokes about a package of cigarettes per day.

FAMILY HISTORY: His father was killed apparently during the war; his mother is living and has had cancer of the breast. He has no siblings. There is no family history of diabetes, high blood pressure, heart disease.

SIGNATURE OF PHYSICIAN

DATE

H. [illegible]

CLINICAL RECORD

PHYSICAL EXAMINATION

DATE OF EXAM.	HEIGHT	WEIGHT			TEMPERATURE	PULSE	BLOOD PRESSURE
		AVERAGE	MAXIMUM	PRESENT			

INSTRUCTIONS.—Describe (1) General Appearance and Mental Status; (2) Head and Neck (General); (3) Eyes; (4) Ears; (5) Nose; (6) Mouth; (7) Throat; (8) Teeth; (9) Chest (General); (10) Lungs; (11) Cardiovascular; (12) Abdomen; (13) Hernia; (14) Genitalia; (15) Rectum; (16) Prostate; (17) Back; (18) Extremities; (19) Neurological; (20) Skin; (21) Lymphatics.

The patient is well developed and well nourished and does not appear acutely ill. Skin: There were no lesions noted. Bone, Joints & Muscles: There is a large scar on the inner aspect of the right elbow at the site of the injury received in World War II. There appears to be some muscular atrophy in the area. He has no other joint deformity or limitation of motion. Lymph Nodes: There were no enlarged axillary, cervical, epitrochlear, or inguinal lymph nodes. Head: The pupils were equal and reactive; the ocular fundi show no abnormalities of the vessels or discs; the left eardrum appeared normal, the right appeared retracted and scarred. There was no nasal congestion or obstruction. The patient is edentulous. The pharynx was not inflamed. Neck: There were good carotid pulsations, no bruit were heard, the thyroid was not enlarged. Lungs: Clear to auscultation and percussion. Heart: The heart rhythm was regular, no murmurs were heard; blood pressure right arm 130/85, left arm 140/90; abdomen: The liver edge was felt about 2 fingerbreadths below the right costal margin. The abdomen was soft and non-tender, there were no other palpable organs or masses. There is a scar of a right inguinal herniorrhaphy. The inguinal rings were intact. Genitalia: Normal male. Pectus: No masses were present, the prostate was normal in size and consistency. Extremities: There was no edema; there were good dorsalis pedis pulsations. Neurological examination: The cranial nerves were intact to gross testing. The deep reflexes were physiologic; the Babinski's were plantar in nature. No impairment of vibratory sensation or sensation to pain or touch could be demonstrated. When the patient stands with his feet together and his eyes closed he tends to fall to the left.

- IMPRESSION: 1. Loss of equilibrium, cause undetermined.
2. History of high blood pressure.
3. Status post Elavil overdose.
4. History of cardiac arrest four years ago during a hernia operation and three years ago during tooth extraction.

PLAN: Neurological consultation. Will send for records from Columbia Presbyterian Hospital. Will not start extensive neurological workup until the neurological consultant has seen the patient.

sb-6/9/75

Handwritten signature

(Continue on reverse side)

PATIENT IDENTIFICATION (Type or write entries on this form: last, first, middle; grade, class, hospital or unit and facility)	EXAMINER NO. 1001075	WARD NO.
SEITZLER, Joseph		
	PHYSICIAN'S SIGNATURE	STANDARD FORM 506

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO:	FROM: (Requesting ward, unit, or clinic)	DATE OF REQUEST	
REASON FOR REQUEST (Complaints and findings)			

FOLLOWUP

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION	<input type="checkbox"/> EMERGENCY
		<input type="checkbox"/> BEDSIDE <input type="checkbox"/> ON CALL	<input type="checkbox"/> ROUTINE

CONSULTATION REPORT

Mr. Seiller was seen last week in the neurological specialty clinic. Since that time, he has had a brain scan and skull x-ray which were normal. EEG done but pending report. In view of these tests being normal, I would recommend continuing physical therapy. Would not recommend angiography or spinal tap.

sb-7/23/75

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
Joseph J. Seiller, Jr., M.D.	7/23/75		
PATIENT'S IDENTIFICATION (For type I or written entries from Name, sex, age, middle, grade, date, hospital or medical facility)		REGISTRATION NO.	WARD NO.
SEILLER, Joseph		80074-23-00	

1-5

GPO 415-16-8214-1 471 723

CLINICAL RECORD	CONSULTATION SHEET
REQUEST	
TO: Dr. Long	FROM: (Requesting unit, unit, or office) DATE OF REQUEST
REASON FOR REQUEST (Complaints and findings)	

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> BEDSIDE <input type="checkbox"/> ON CALL	<input type="checkbox"/> EMERGENCY <input type="checkbox"/> ROUTINE
--------------------	----------	--	--

CONSULTATION REPORT

This neurological consultation is being requested by Dr. Webb, Internal Medical Department. The patient is a 50 year old right-handed white male being referred for evaluation of his imbalance of four years duration. Patient dates his problem back to 4 years ago at which time he had the sudden onset of vertigo with nausea and vomiting, as well as headaches which were extremely severe. He was having difficulty in walking. He was evaluated first at the Lenox Hospital in New York. He was again evaluated at the Columbia Presbyterian Hospital in New York City, New York, under Dr. Arnold P. Gold's care. Complete neurological workup to exclude an intracranial lesion was performed. This included a right brachial arteriogram, and several spinal taps. The brain scan was questionable. The first brain scan done at Lenox Hospital was normal, however. The second brain scan was questionable with right parietal regional increased uptake. Dr. Houston ~~Marble~~ saw the patient. At the time of his discharge from the Columbia Presbyterian Hospital, no definite diagnosis was made. The diagnosis was vertigo of obscure etiology. Since then, patient continued to have imbalance as well as mild vertigo. However, his dizziness has gotten better. His walking has also gotten better or stabilized at least. ENT and ophthalmology consultation also non-contributory while he was at the Columbia Presbyterian Hospital. In May, 1975, he apparently had an overdose of Alavil of unknown etiology. This was evaluated and subsequently transferred here for evaluation of his imbalance. While he was at the Columbia Presbyterian Hospital examination to rule out pheochromocytoma was done which was normal.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (Last, first, middle, grade, date, hospital or other facility)		ROOM NO.	WARD NO.

CONSULTATION SHEET
Standard Form 513
11-58-1

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO: Dr. Wong	FROM: (Requesting ward, unit, or activity)	DATE OF REQUEST	
REASON FOR REQUEST (Complaints and findings)			
PROVISIONAL DIAGNOSIS			
DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> IN-SIDE <input type="checkbox"/> ON CALL	<input type="checkbox"/> EMERGENCY <input type="checkbox"/> ROUTINE
CONSULTATION REPORT			

-2-

Patient has no complaint of bladder dysfunction, speech difficulty, visual field defects, double vision, swallowing difficulty, or sensory disturbance. He continues to have a mild headache over the right side. However this history is not very reliable.

Patient is known to have mild hypertension prior to the onset of his present illness. He had two cardiac arrests prior to the onset of his present illness. One was during a hernia operation while he was in Ireland, the second one occurred later during minor surgery.

The general physical examination today is essentially unremarkable. Patient appears well developed, well nourished and well oriented with no speech difficulty, no evidence of acute distress. No evidence of chronic distress. Skin is unremarkable. HEENT unremarkable. No neck rigidity. Trachea midline.

Neurovascular examination reveals no bruits heard over his calvarium. No bruits heard over the anterior or posterior neck. Heart regular sinus rhythm. Chest is clear. Abdomen unremarkable. There is a well healed scar over the right lower quadrant from a right inguinal operation 4 or 5 years ago in Ireland. Extremities reveal no pitting edema. There is a well healed scar over the right elbow and over his right hand. He has some weakness in his right hand from a previous injury.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
STABER, Joseph			
PATIENT'S IDENTIFICATION (Type or write in on this form Name, last, first, middle, grade, date, hospital or medical facility)		EXAMINER NO.	WARD NO.

CLINICAL RECORD	CONSULTATION SHEET
REQUEST	
TO: Dr. Von-	FROM: (Requesting ward, unit, or agency) DATE OF REQUEST
REASON FOR REQUEST (Complaints and findings)	

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> bedside <input type="checkbox"/> on call	<input type="checkbox"/> EMERGENCY <input type="checkbox"/> ROUTINE
--------------------	----------	--	--

CONSULTATION REPORT

-3-

Neurological examination: Gait and posture unremarkable. Patient appears to be weak and slight wide-based but not spastic. He has to walk with the aid of two canes. Romberg sign is positive. There is no nystagmus noted. Slight weakness of the right hand grip due to previous injury. There is slight weakness in his leg. Coordination appears normal. Position sensation normal. Sensory examination normal. Vibratory sensation normal. Deep tendon reflexes hypoaactive. There is no Babinski or clonus noted. Cranial nerves are perfectly intact from I to XII, one by history. There is no facial weakness noted. Visual fields are intact. No evidence of involuntary movement or tremor noted. Coordination shows slight ataxia on heel to shin and finger to nose examination on both sides.

IMPRESSION AND DISCUSSION: At this time assuming that the previous arteriograms were normal as interpreted by Dr. Houston "Morgan," assuming that the spinal taps were normal, I feel that this probably is a vascular spasm affecting perhaps the posterior circulation, perhaps the posterior fossa. It is quite possible this represents a degenerative disease, however, if this is a degenerative disease, it would not stop all of a sudden. I am inclined to feel that this represents a vascular spasm. I would not recommend further evaluation such as angiography on this man. I would agree to repeat skull x-ray, brain scan, EEG, and eventually a spinal tap if these tests were abnormal. In the meantime would suggest physical therapy.

SH-7/12/54

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (Use type for written or this form. Name, last, first, middle, grade, date, hospital or institution)		EXAMINATION NO.	WARD NO.

CONSULTATION SHEET
Standard Form 515
11-54

ST. JOHN'S HOSPITAL, SPRINGFIELD, MO.

DEPARTMENT OF NUCLEAR MEDICINE

SCINTISCAN REPORT

75-1169

ROOM Medical Center

AGE 50

DATE 7/11/75

Seiller, Joseph 32675-138

SEX: Male

DOCTOR Webb

8 mc 99-Tc

Anterior, posterior and both lateral views.

The scans show entirely normal vascular trapping of the isotope throughout without any localized areas of increased activity to suggest any lesions.

Brain scan - no diagnostic abnormalities.

Frederick C. Collier, M. D./115

CLINICAL RECORD

RADIOGRAPHIC REPORT

ATTACH 3D REPORT ALONG WITH THIS AND SUCCEEDING ONES ON ABOVE LINES

ATTACH 2D REPORT WITH TOP AT THIS LINE

PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME

Smith, Joseph

REGISTER NO.

WARD NO.

AGE SEX (CHECK ONE)

☒ MALE

☐ FEMALE

☐ DEPENDENT, WHEELCHAIR OR STRETCHER

☐ BED PATIENT

☐ AMBULATORY

EXAMINATION REQUESTED

Skull Films

(no prev.)

(Above space for mechanical imprinting, if used)

PERTINENT CLINICAL HISTORY, OPERATIONS, PHYSICAL FINDINGS, AND PROVISIONAL DIAGNOSIS

4 years history of ...

FILM NO.

7/15/75 mo

DATE OF REQUEST

7/15/75

REQUESTED BY

...

RADIOGRAPHIC REPORT

Skull Films: The skull is symmetrical. The sella turcica is normal. The pineal calcification is well shown in its usual position, and there are no unusual calcifications. The calvarium is intact.

COMMENT: Essentially negative for plane films of the skull.

[Signature]

[Signature]

DATE OF REPORT: *7-15-75*

SIGNATURE: (Specify location of laboratory if not part of reporting facility)

(NAME OF HOSPITAL OR OTHER MEDICAL FACILITY)

Standard Form 100-1 (Rev. 1-67) and 100-2
Prescribed by GPO as part of the
Circular 7-32 (Rev. 1-67)
RADIOGRAPHIC REPORT
510-107

519-207

PROPERTY OF THE UNITED STATES GOVERNMENT. This report is loaned to your facility and is not to be distributed outside your facility.

801 45-1058

PAID FOR BY ...

Smith, Joseph

Seiller 62675
1-3

Dr. Salas

HSN-140-1
5-59

PROGRESS REPORT
PHYSICAL THERAPY
OCCUPATIONAL THERAPY

ORIGINATING SERVICE

☒ P.T.

☐ O.T.

PATIENT'S IDENTIFICATION (For typed or written entries give name, register no., ward no., date)

PROGRESS REPORT (Use reverse side for additional space)

11/13/75 Pt. on maintenance exercise 3x per week working on lower extremity strength and upper extremity dexterity. No record on increase of general strength. He continues to be a fairly active patient is independent in ambulation with aid of 2 crutches. Will keep patient on schedule for supportive maintenance purposes indefinitely.

J. Witt, P.T.

DOCTOR'S COPY

SEILLER, J.

82675

1-3

DR. SALAS

HSN-140-1
5-59

PROGRESS REPORT
PHYSICAL THERAPY
OCCUPATIONAL THERAPY

ORIGINATING SERVICE

☒ P.T.

☐ O.T.

PATIENT'S IDENTIFICATION (For typed or written entries give name, register no., ward no., date)

PROGRESS REPORT (Use reverse side for additional space)

9/8/75 - Have resumed strengthening exercise 3 X week with emphasis on lower extremities.

J. Witt, P.T.

SEILER, J.

82675

1-3

DR. A. SALAS

HSM-140-1
5-59PROGRESS REPORT -
PHYSICAL THERAPY AND
OCCUPATIONAL THERAPY

ORIGINATING SERVICE

XXX P.T.

O.T.

PATIENT'S IDENTIFICATION (For typed or written entries give name, register
no., ward no., date)

PROGRESS REPORT (Use reverse side for additional space)

8/25/75 - Pt. has reported to P.T. for strengthening exercises for
lower extremities, for the past month. He has shown an
increase in strength and endurance; however no change in occasional
"dizzy" complaints. Treatment continued this date.

J. Witt, P.T.

TREATMENT AND/OR TEST(S) ADMINISTERED:

SEILER, J. 82675
1-3 Dr. Salas

HSM-140-1
5-59PROGRESS REPORT -
PHYSICAL THERAPY AND
OCCUPATIONAL THERAPY

ORIGINATING SERVICE

XXX P.T.

O.T.

PATIENT'S IDENTIFICATION (For typed or written entries give name, register
no., ward no., date)

PROGRESS REPORT (Use reverse side for additional space)

8/5/75 Pt. is reporting daily to P.T., receiving exercise directed mainly
at strengthening of lower extremities. He is ambulating to and from
P.T. Department with aid of 2 canes. Strength of lower extremities in 50%
or better range with R. stronger than left. Pt. reports occasional episode
of getting dizzy during exercise.

J. Witt, R.P.T.

DOCTOR'S COPY

register no., ward no., date, age, sex)

(Use reverse side for continuation)

HSM-155
3-60

FORMERLY PHS-783

PHYSICAL THERAPY



ELECTROCARDIOGRAPH REQUEST

PREV. ECG YES ☐ NO ☐ AMB. ☐ REG. ☐ EMERG. ☐ SIG ☐ QUIN. ☐ AGE _____ SEX _____ B.P. _____
CLIN. DIAG. _____ ORDERED BY _____ DATE _____

ELECTROCARDIOGRAPH REPORT

RHYTHM: SINUS ☒ OTHER: _____
RATES: _____ INTERVALS: _____ AXIS: _____
ATR 96 VENTR 56 P-R 16 QRS 64 QTc _____ + 0 - 0

DESCRIPTION:	LIMB LEADS	PRECORDIAL LEADS
P <i>U-shaped</i>		
QRS <i>normal configuration</i>		<i>normal R wave progression</i>
S-T		
T-U		

INTERPRETATION, SERIAL CHANGES, IMPLICATIONS:
within normal limits

PATIENT'S IDENTIFICATION INTERPRETED BY

Feiler, Joseph
80675-158

Dr. [Signature]
ECG NO. _____
DATE *12-15-95*

UNITED STATES GOVERNMENT

U.S. DEPARTMENT OF JUSTICE

Memorandum

TO : WHOM IT MAY CONCERN.

DATE: JUNE 3rd, 1976

FROM : *Albert W. Weir*
S.O. - ALBERT W. WEIR
NYC - MCC

SUBJECT: DR. JOSEPH SEILLER # 82675-158
B-1112 11 North

Let me take this opportunity, to thank Doctor Seiller for his assistance in saving the life of inmate Ciro R. Riccardi # 22792-175.

It is a matter of record that on April 21st, 1976, while I had just completed my 6:30 A.M. to 3:00 P.M. tour, and had gone off duty, when I was summoned back to the 11th floor, north at 3:20 P.M. During this time, inmate Riccardi had hanged himself from the top of his quarters door. Inmates Victory and Capra are credited with cutting him down, however, it is my understanding that Riccardi was already clinically dead. Doctor Joseph Seiller was already working on Riccardi, when several other staff members and I arrived. In my opinion, (as well as Doctor Goldstein, the MCC Psychiatrist) that Doctor Seiller is responsible for saving the life of this man.

Having had the opportunity to know this man as I do, I feel it was more than just the ethical code of the medical Hippocratic Oath, which made him perform as he did. I feel it was more of his basic intellect and general helpful personality, which he uses apply to help myself, as well as other officers and inmates on a daily basis.

It has come to my attention, that Doctor Seiller was not given Bureau recognition, for the part he played in this rescue. Perhaps because of his professional background, they felt it was "in the line of duty." In any case, it does appear unfair and biased in my opinion. For any other favorable information needed in this matter, please feel free to contact me at any time. Other information may be made available by either Dr. Goldstein, or the Bureau, directly. Thank you for any and all consideration this letter may bring.

Mr Michael Young, Attorney
Federal Defender Services Unit
The Legal Aid Society
Room 509
United States Court House
Foley Square
New York, New York 10007

Re.: Civ 6000 NEF

Sir,

the inmates of 11 North feel strongly about an injustice done to one of them. On April 21, 76 at 3.00 p.m. one Ciro Riccardi of room D 1127 attempted suicide by hanging. The door of his room was broken by Al Victory and John Capra but he was dead. We have a Doctor on the floor, Doc Joe Seiler, who walks on two canes and is very sick. But he got there on the double, pushed Victory and Capra aside, reached into the mouth of Riccardi and pulled his tongue out, then he started smashing him on his chest with one hand, holding the tongue with the other and did a few other things to make the kid alive again. As the officers came and see what he is doing, they jump him and want to take him off Riccardi, but he not give up until two said that he was a Doctor and they should leave him go. Dr. Golstein came only about half hour later with an MTA and there was nothing for them to do any more but take the kid to the second floor. Our Doctor had a big argument with the lieutenant and the doctor about the things which he said should be on every ward and then he just walked away. The Officer, Cruz thanked him later and he and another Officer, Weir, suggested him to commendation to have saved the life of Riccardi. Next morning, the lieutenant come to our Doctors room and the Doctor tell him again that he want nothing but things to help people. The other two Victory and Capra got a letter from the Warden and may be paroled, but our Doctor gets nothing. Cruz said that the lieutenant told him, that it was his job to help people, because he is a Doctor and the unit manager, Swazxxx and the case manager are done nothing and they know. Cruz and Weir said, this is unfair and we feel so too, but the Doctor says nothing and is helping people every day. If we want to see the doctor on the second floor, we must wait for days or never see him, but our Doctor is not care what color a man has and is friendly and helps.

Our Doctor is coming up for sentencing and perhaps in your lawsuit you can make the Judge aware of what he has done and help him or testify for him. Riccardi would be dead without him and he wanted to try it again, but our Doctor talked him out of it.

We feel that Society should be proud about people like him and the Warden should give him what he has coming and not say that he must do it because he is a Doctor, he has a number like everyone else. The officers and inmates call him "Doc" and do so with respect. The inmates of 11 North feel, that you and the Legal Aid should check it out and do something about it. Some of us knew him from the Toman, and he did there the same thing for many people and the Warden wrote a letter about him in his file.

The family of Riccardi wants to sue the Warden and take our Doctor into court as a witness and he may have some trouble. We feel that this should not happen to a decent man and ask you to help him. You can call the Warden and tell him what we can ask all of the inmates here and also Victory and Capra and Riccardi, but he was out. If so-on-ones, nothing will happen and we need your help. Doc Seiler said to write to you because you know what you are doing and can help and our doctor will not do anything.

Yours truly,

Michael Young, Attorney

UNITED STATES GOVERNMENT

Memorandum

TO : WHOM IT MAY CONCERN

DATE: June 14th, 1976

FROM : *Victor Cruz*
Victor Cruz, S.O. - NYC - DEC

SUBJECT: DR JOSEPH SEILLER, 32675-158, 11 North, 3 1112

It is not usual that we give references to one of our residents, however there are exceptions.

On April 21st, 1976, while I was on the 3 to 11 PM shift, at about 3.02 PM, Gino Riccardi # 22792-175 hanged himself in his room. John Capra and Albert Victory succeeded to break into his room and get him down and out on the floor, but he appeared to have ceased to breath and have heartbeat. They received a departmental commendation for their commendable initiative and action.

Doctor Seiller is an invalid and walks on his two canes, he is not supposed to exert himself. As he realized what was happening, he disregarded his own condition and worked on Riccardi until he was able to revive him before anyone could have come to his aid. I recommended Doctor Seiller several times for a commendation and reward. I did not find anything in his records which could be detrimental to giving it to him.

I want to express my own thanks and appreciation for an act of humanity which saved a life.

Doctor Seiller is well liked here, his intelligence and personality draw attention to this quiet and friendly man. I think he deserves recognition and I feel the least I can do is to give it to him. If any other information should be needed, I will make them available on request, but I hope that this statement will receive some consideration on its own.

CERTIFICATE OF SERVICE

Aug 26, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

W. H. R. Y. 7